



SIDLEY AUSTIN LLP  
1501 K STREET, N W  
WASHINGTON, D C 20005  
(202) 736 8000  
(202) 736 8711 FAX

thynes@sidley.com  
(202) 736 8198

BEIJING  
BRUSSELS  
CHICAGO  
DALLAS  
FRANKFURT  
GENEVA  
HONG KONG  
LONDON  
LOS ANGELES

NEW YORK  
PALO ALTO  
SAN FRANCISCO  
SHANGHAI  
SINGAPORE  
SYDNEY  
TOKYO  
WASHINGTON, D.C.

FOUNDED 1866

November 19, 2010

**By Hand Delivery**

Rachel D. Campbell, Director  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

228286



Re: **STB Finance Docket No. 35081 (Sub-No. 1), *Canadian Pacific Railway Company, et al. – Control – Dakota, Minnesota and Eastern Railroad Corporation, et al.***

Dear Ms. Campbell:

Enclosed for filing in the above-referenced matter is the Reply of Canadian Pacific Railway Company, Soo Line Railroad Company, and Dakota, Minnesota and Eastern Railroad Corporation in Opposition to United Transportation Union Local 911's Petition for Enforcement. The filing includes:

1. An original and ten (10) copies of the Highly Confidential Version of the Reply. Material that is designated Highly Confidential pursuant to the Board's November 17, 2010 Protective Order ("Protective Order") is marked with double braces (e.g., "{{{}}"). Material that is designated Confidential pursuant to the Protective Order is marked with single braces (e.g., "{}").
2. An original and ten (10) copies of the Public Version of the Reply. Highly Confidential and Confidential material is redacted from the Public Version
3. A CD containing an electronic copy of each Version in pdf (searchable) format.

ENTERED  
Office of Proceedings

NOV 19 2010

Part of  
Public Record



Rachel D. Campbell  
November 19, 2010  
Page 2

Please acknowledge receipt of the enclosed documents for filing by date-stamping the extra copies and returning them to our messenger. Thank you for your assistance in this matter. If you have questions, please contact the undersigned counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "Terence M. Hynes", with a horizontal line above it.

Terence M. Hynes

TMH:aat  
Enclosures  
cc: Parties of Record

PUBLIC VERSION

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 35081 (SUB-NO. 1)**

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.  
- CONTROL -  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**



**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY, SOO LINE RAILROAD  
COMPANY, AND DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
IN OPPOSITION TO UNITED TRANSPORTATION UNION LOCAL 911'S PETITION  
FOR ENFORCEMENT**

**ENTERED  
Office of Proceedings**

**NOV 19 2010**

**Part of  
Public Record**

Terence M. Hynes  
Jeffrey S. Berlin  
Mark E. Martin  
Matthew J. Warren  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
202-736-8000

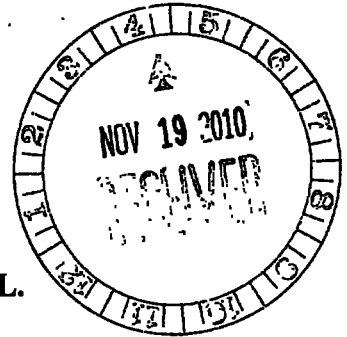
*Counsel for Canadian Pacific Railway Company, Soo Line Railroad Company, and Dakota,  
Minnesota & Eastern Railroad Corporation*

Dated: November 19, 2010

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 35081 (SUB-NO. 1)**

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.  
– CONTROL –  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**



**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY, SOO LINE RAILROAD  
COMPANY, AND DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
IN OPPOSITION TO UNITED TRANSPORTATION UNION LOCAL 911'S PETITION  
FOR ENFORCEMENT**

Canadian Pacific Railway Company("CP") and its U.S. carrier subsidiaries, Soo Line Railroad Company ("SOO") and Dakota, Minnesota and Eastern Railroad Corporation ("DM&E"), respectfully submit this Reply in opposition to United Transportation Union Local 911's ("Local 911") "Petition for Enforcement," which was submitted by Local 911 in Finance Docket No. 35081<sup>1</sup> and later filed in this subdocket pursuant to the Board's October 25, 2010 Decision. Local 911 – a subordinate local unit within the United Transportation Union ("UTU") that does not have authority to bargain collectively or enter into labor agreements with SOO – alleges in its Petition that DM&E is running more than one train per day pursuant to trackage rights DM&E possesses over SOO's lines between St. Paul, Minnesota and La Crescent, Minnesota, and that DM&E's exercise of its trackage rights somehow violates the Board's September 30, 2008 decision approving CP's acquisition of indirect control of DM&E ("CP/DM&E Control Decision"). See Petition at 2-3. Local 911 demands that the Board order "CP to enter into Good Faith negotiations with UTU Local 911 for an Implementing

---

<sup>1</sup> Finance Docket No. 35081 is referred to herein as the "CP/DM&E Control Proceeding."

Agreement.” *Id.* at 9-10.<sup>2</sup> Simply put, Local 911’s complaint boils down to a claim that DM&E train crews are performing work that should be performed by SOO train crews. As demonstrated below, Local 911’s claims are utterly meritless, and the Petition should be denied for multiple independent reasons.

In the first place, Local 911’s Petition should be rejected for the fundamental reason that it does not have legal capacity to obtain the relief it seeks. Local 911 does not represent any SOO employees for purposes of collective bargaining under the Railway Labor Act, and SOO could not lawfully negotiate an implementing agreement with Local 911 (even if such an agreement were appropriate here, which it clearly is not). In addition, the Petition should be denied because the claim it raises must be resolved in the first instance in arbitration under the labor protective conditions imposed in the *CP/DM&E Control Decision*, and not by the Board.

Moreover, Local 911’s Petition is predicated on misstatements of the facts and the governing law. DM&E has the right to run as many as six trains per day over the St. Paul – La Crescent line, and its exercise of its trackage rights has not exceeded (or even approached) that limit. Local 911’s suggestion that DM&E’s trackage rights, which trace back to 1997, were somehow curtailed by the Board’s approval in 2008 of the CP/DM&E control transaction in Finance Docket No. 35081 is wrong – to the contrary, during that proceeding, the Board specifically rejected Local 911’s request for a condition limiting DM&E’s trackage rights. Furthermore, no SOO employees have been adversely affected by DM&E’s exercise of its

---

<sup>2</sup> It should be noted at the outset that the Petition’s references to “CP” and “CP crews” are largely a misnomer. CP is not a U.S. railroad, has no employees of its own that are represented by the United Transportation Union, is not subject to the Railway Labor Act, and does not operate the trains in the United States that are of interest to Local 911. The relevant United States entities here are SOO (which owns and operates the St. Paul-La Crescent line at issue) and DM&E (which operates over that line pursuant to trackage rights).

preexisting trackage rights. Contrary to Local 911's claim that SOO traffic has somehow been "shifted" to DM&E trackage rights trains, SOO trains over the St. Paul – La Crescent line have increased substantially since the transaction. In short, the Petition is without merit and should be denied.

## **I. FACTUAL BACKGROUND**

### **A. The Twin Cities Trackage Rights**

The focus of Local 911's Petition is trackage rights that DM&E possesses over 133.3 miles of SOO's lines between La Crescent, Minnesota and St. Paul, Minnesota ("Twin Cities Trackage Rights"). These trackage rights derive from a April 4, 1997 "Twin Cities Trackage Rights Agreement" in which SOO granted nonexclusive trackage rights to I&M Rail Link, LLC ("IMRL") over SOO's line from La Crescent to St. Paul. *See* Exhibit 1 at ¶ 1.3. The Twin Cities Trackage Rights Agreement permitted I&M to operate as many as six trains per day over the territory covered by the agreement. *See id.* at ¶ 2.14 ("I&M's use of the Subject Trackage . . . shall not exceed on a regular basis six (6) trains per calendar day."). SOO's grant of trackage rights to IMRL pursuant to the Twin Cities Trackage Rights Agreement was authorized by the Board in conjunction with the acquisition by IMRL of certain lines of SOO.<sup>3</sup>

On July 29, 2002, the rail assets of IMRL (including the Twin Cities Trackage Rights) were acquired by the Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), a newly created indirect subsidiary of DM&E.<sup>4</sup> IC&E utilized the Twin Cities Trackage Rights through

---

<sup>3</sup> *See I&M Rail Link, LLC – Acquisition and Operation Exemption – Lines of I&M Rail Link, LLC*, Finance Docket No. 34146, at 12 (served Apr. 2, 1997) (Board decision denying petitions to stay or revoke exemption).

<sup>4</sup> *See Iowa, Chicago & Eastern R.R. Corp. – Acquisition and Operation Exemption – Lines of I&M Rail Link, LLC*, Finance Docket No. 34177, at 2 (served July 22, 2002) (denying requests to stay exemption); *Iowa, Chicago & Eastern R.R. Corp. – Acquisition and Operation Exemption –*

2008, when IC&E merged into DM&E in a corporate simplification transaction.<sup>5</sup> Neither the exemption proceeding whereby IC&E succeeded to IMRL's rights under the Twin Cities Trackage Rights Agreement nor the exemption whereby DM&E succeeded to IC&E's rights altered the scope of the Twin Cities Trackage Rights now held by DM&E. Nor has any Board decision altered the scope or breadth of those trackage rights. As a result, DM&E continues to have the right to run as many as six (6) trains per calendar day over SOO's line between La Crescent and St. Paul. As discussed further below in Section I.C., DM&E is not operating even close to that number of trains today.

While both DM&E and SOO operate over the St. Paul – La Crescent segment, the two railroads use that line for entirely different flows of traffic. SOO uses the St. Paul – La Crescent segment as part of its generally east-west route from St. Paul to Milwaukee to Chicago. *See Ex. 2* (map of lines at issue). SOO trains bound for Chicago from St. Paul travel over the St. Paul – La Crescent segment, then turn east at River Junction towards Milwaukee and then south to Chicago. DM&E, on the other hand, uses its trackage rights over the St. Paul – La Crescent segment for north-south traffic bound either for DM&E-served customers at points such as Clinton, Davenport, and Muscatine, Iowa, or for interchange with connecting carriers at Kansas City. As discussed below, both before and after CP acquired control over DM&E and IC&E, IC&E and later DM&E ran daily through trains from St. Paul to Kansas City that in part utilize the Twin Cities Trackage Rights. Conversely, SOO has not operated north-south train service to the Kansas City gateway since it sold its Chicago-Kansas City line to IMRL in 1997.

---

*Lines of I&M Rail Link, LLC*, Finance Docket No. 34177 (served Jan. 21, 2003) (denying petitions to revoke exemption).

<sup>5</sup> To be precise, IC&E merged into its corporate parent Cedar American Rail Holdings, which in turn merged into DM&E. *See Canadian Pacific Railway Co., Soo Line Holding Co. and Dakota, Minnesota & Eastern R.R. Corp., et al. – Corporate Family Transaction – Iowa, Chicago & Eastern R.R. Corp.*, Finance Docket No. 35202 (notice of exemption served Dec. 12, 2008).

## B. The CP-DM&E Control Transaction

On October 5, 2007, CP, Soo Line Holding Company, DM&E, and IC&E (collectively, “Applicants”) submitted an Application for approval of CP’s acquisition of indirect control over DM&E and IC&E. *See* Finance Docket No. 35081, Application, CP-2, DME-2 (filed Oct. 5, 2007) (“Application”).<sup>6</sup> The Application explained that CP’s acquisition of control over the DM&E/IC&E network would both expand the geographic reach of Applicants’ rail networks and position them to respond to the growing demand for rail service. *See id.* at V.S. Green at 3. Applicants argued (and the Board agreed) that SOO’s and DM&E’s rail networks were complementary, end-to-end networks that largely did not overlap. *CP/DM&E Control Decision* at 11; Application at 8-9. One of the most important geographic differences between the two networks is that DM&E (through IC&E) had access to the Kansas City gateway. SOO’s lines do not reach that critical gateway.

Pursuant to 49 C.F.R. § 1180.8(b), the Application included an Operating Plan that contained “a summary of the proposed operating plan changes . . . that will result from the transaction” and “[t]he patterns of service on the properties.” § 1180.8(b), (b)(1). In accordance with the regulatory requirement to describe “patterns of service,” the Operating Plan included detailed system train schedules, blocking plans, and local service operating plans for SOO, DM&E and IC&E. *See* Application Ex. 13 at Appendices A-D (summaries of SOO system train schedules, blocking plans, and local service operating plan); *id.* at Appendices E-H (summaries of DM&E and IC&E system train schedules, blocking plans, and local train schedules). The Operating Plan’s detailed description of then-current DM&E and IC&E operations included a

---

<sup>6</sup> The Application was supplemented on December 5, 2007 pursuant to the Board’s November 2, 2007 decision to treat the proposed transaction as a “significant transaction.” *See* Finance Docket No. 35081, Supplement to Application, CP-7, DME-7 (filed Dec. 5, 2007). The Supplement did not alter the proposed Operating Plan.



discussion of IC&E's operations over the Twin Cities Trackage Rights. Specifically, the Operating Plan explained that at the time of the transaction IC&E operated a "daily scheduled manifest through train[] . . . in each direction between . . . St. Paul, MN – Kansas City" and that this train operated in part over the ICE's trackage rights over SOO lines. Application Ex. 13 at 12, 14; *see also id.* at Appendix E (graphical depiction of DM&E and IC&E main line trains as of June 29, 2007); *id.* at Appendix K (graphical summary of DM&E/IC&E trackage rights).

Because the proposed transaction in the CP/DM&E Control proceeding was essentially an end-to-end coordination of the complementary SOO and DM&E/IC&E systems, the Applicants "anticipate[d] that there will be relatively few changes in the operations of the systems of CP and the DME" after the transaction. Application Ex. 13 at 25. But Applicants certainly did not suggest that no post-transaction changes would ever be made to the SOO and DM&E/IC&E train schedules set forth in the Operating Plan. Indeed, Applicants made clear that they expected that SOO and DM&E/IC&E would need to accommodate some traffic growth, both as a result of new business and organic, internal growth in the volume of existing business. *See id.* at 28. Applicants also noted that before the transaction was approved they had limited ability to "fully evaluate or model projected traffic flows or potential efficiencies," and that if the transaction were approved Applicants might identify "additional opportunities for operating and service design improvements." *Id.* at 29. In fact, Applicants specifically stated that "available corridor capacity" on SOO's St. Paul-Milwaukee-Chicago corridor – the corridor that includes the St. Paul – La Crescent segment that is the subject of the Twin Cities Trackage Rights – could present "opportunities for service improvements, longer hauls, and new business." *Id.* at 31. Applicants also noted that the "[d]irect access to the important Kansas City gateway" that the

acquisition would give CP and SOO significant opportunities to route north-south traffic on DM&E's lines through Kansas City. Application, V.S. Green at 3; *see* Application at 9.

Local 911 filed comments in the CP/DM&E Control proceeding requesting that the Board impose certain conditions, allegedly for the benefit of Local 911 members. *See* Letter from D. Towner on behalf of Local 911, Finance Docket No. 35081 (filed Feb. 28, 2008). Among other things, Local 911 asked the Board to limit IC&E's use of the Twin Cities Trackage Rights to one train per day in each direction and to assure that SOO crews would handle any "extra freight that comes out of the St. Paul terminal going down to Kansas City . . . or any extra freight coming into St. Paul." *See id.* at 1-2 (emphasis added). Local 911 claimed that without such a condition SOO would "likely funnel or re-route" existing SOO traffic to IC&E trackage rights trains. *Id.* at 1. In response, Applicants noted that they "have no plans to shift existing traffic from SOO trains to IC&E trains," and that Local 911's demand that SOO crews handle traffic between St. Paul and Kansas City made no sense since SOO did not have (and after the transaction, still would not have) the ability to operate trains to Kansas City. *See* Applicants' Response to Comments and Requests for Conditions and Rebuttal in Support of Application, Finance Docket No. 35081, at 66-67 (filed Apr. 18, 2008). In any event, Applicants noted that if there were some future unforeseen operating change that amounted to implementation of the transaction, the Board's standard labor protective conditions would provide appropriate protections. *See id.* In response, Local 911 reiterated its demand that IC&E's trackage rights be limited to one train per day in each direction and that all additional work into and out of St. Paul (regardless of destination) be allocated to SOO crews. *See* Letter from D. Towner on behalf of Local 911, Finance Docket No. 35081, at 2-3 (filed May 19, 2008).

The Board rejected Local 911's requested conditions. *See* Decision No. 11, *Canadian Pacific Ry. Co. – Control – Dakota, Minn. & E. R.R. Co.*, Fin. Docket No. 35081, at 18-19 (Sept. 30, 2008) (“*CP/DM&E Control Decision*”). The Board found no evidence to support Local 911's contention that “existing Soo Line traffic” would be “shift[ed]” to IC&E trains for movement under the Twin Cities Trackage Rights, and it firmly rejected Local 911's suggestion that the Board impose a condition forbidding IC&E to operate more than one train per day in each direction over those trackage rights. *Id.* at 19. Moreover, the Board noted that even if existing SOO traffic were shifted to IC&E trains, SOO employees would be protected by *New York Dock* labor protective conditions: “[S]hould CP&D make changes to its operations in the course of implementing the proposed transaction that adversely affect employees, *New York Dock* protections would be available.” *Id.* Local 911 did not petition the Board for reconsideration of the *CP/DM&E Control Decision* and did not file a petition for appellate review of the Decision. The D.C. Circuit affirmed the *CP/DM&E Control Decision* in all respects. *Commuter Rail Division of the Regional Transp. Auth d/b/a Metra v. STB*, 608 F.3d 24 (2010).

### C. DM&E's Trackage Rights Operations

Because the *CP/DM&E Control Decision* specifically rejected Local 911's request for a condition limiting DM&E trackage rights operations to one train per day in each direction, DM&E has the right to operate as many as six trains per day over the Twin Cities Trackage Rights. DM&E is operating far fewer trains than it is authorized to operate.

{ .} *See*  
Verified Statement of Vern Graham (“V.S. Graham”) at 3, 5. {{

}} *See* Verified Statement of John Brooks (“V.S. Brooks”) at 2.

{{

*See id.*}} {

} *See id.*

The CP/DM&E transaction closed in October 2008. After the transaction closed IC&E, and later DM&E, continued to operate {  
} using its Twin Cities Trackage Rights. *See* V.S. Graham at 3. From November 2008 through December 2009, IC&E/DM&E operated an average of { } trains per month between St. Paul and Marquette, as shown in Table 1. *See id.*

**Table 1**  
**Monthly IC&E/DM&E Trackage Rights Trains:**  
**November 2008 – December 2009<sup>7</sup>**

Month	IC&E/DM&E Trains
11/08	{ }
12/08	{ }
1/09	{ }
2/09	{ }
3/09	{ }
4/09	{ }
5/09	{ }
6/09	{ }
7/09	{ }
8/09	{ }
9/09	{ }
10/09	{ }
11/09	{ }
12/09	{ }
<b>Average/Month</b>	{ }
<b>Average/Day</b>	{ }

{

}

Local 911 includes an Exhibit J to its Petition that it claims shows “extra trains” being operated by DM&E. Petition at 10. That Exhibit is patently flawed. *See* V.S. Graham at

---

<sup>7</sup> *See* V.S. Graham at 3.

4. Local 911's Exhibit J is a printout not of trains, but of crew assignments. On any given day, a train operating between La Crescent and St. Paul may be crewed by more than one crew, for a variety of reasons. *See id.* For example, if a train is delayed by weather or congestion to the point where its crew cannot work the train to its final destination without exceeding the maximum allowable hours of service, then the train must be recrewed. *See id.* In these instances, a crew assignment history like the one Local 911 relies on will list the train twice – once for the original crew and once for the recrew. *See id.* Many trains are listed twice on Local 911's purported list of "extra trains" on account of such recrew. A significant number of the rows on Exhibit J therefore do not represent separate DM&E trains, but rather single trains that needed to be recrewed. *See* Petition Exhibit J at 1 (four of the sixteen listed crew assignments are designated "RC" for recrew).

Since the CP/DM&E transaction, CP, SOO, and DM&E have continued to work to identify new business opportunities. {{

*See id.*}}

{{

*See id.}}*

{{

*See id.}}*

{{

*See id.}}* The Board's

*CP/DM&E Control Decision* explicitly took note of the opportunities for such extended hauls as a result of the proposed transaction. *CP/DM&E Control Decision* at 11. In fact, a substantial

portion of {{ }} is grain traffic. *See* V.S. Brooks at 3. Table 2 illustrates that DM&E grain traffic over St. Paul has {{ }} from 2008 to 2010. *See id.*

**Table 2**  
**DM&E Wheat, Grain, and Agricultural Carloads From/To St. Paul<sup>8</sup>**

	<b>Total Carloads</b>
August 2008 – October 2008	{{ }}
August 2009 – October 2009	{{ }}
August 2010 – October 2010	{{ }}

One of the key benefits of the transaction identified in the Application has therefore been realized – grain shippers on both DM&E’s lines and CP’s and SOO’s lines are taking advantage of improved routing options made possible by the larger CP/SOO/DM&E network. *See* Application Ex. 12 at 3-4 (“Extension of the CP system to the Kansas City gateway will provide CP grain shippers a more efficient routing option for shipments to Gulf Coast export terminals and consumption points in the U.S. Southwest and Mexico.”).

{

} DM&E is still operating far fewer than 6 trains per day over the Twin Cities Trackage Rights, as illustrated by Table 3.

---

<sup>8</sup> *See* V.S. Brooks at 4.



**Table 3**  
**DM&E Trackage Rights Trains (January 2010 – October 2010)<sup>9</sup>**

	<b>DM&amp;E 2010</b>	<b>Trains/Day</b>
January	{ }	{ }
February	{ }	{ }
March	{ }	{ }
April	{ }	{ }
May	{ }	{ }
June	{ }	{ }
July	{ }	{ }
August	{ }	{ }
September	{ }	{ }
October	{ }	{ }

{

}, this opportunity is precisely the sort of procompetitive benefit that the Board recognized when it approved the transaction. *See CP/DM&E Control Decision* at 11. Indeed, the Board specifically recognized that the transaction would potentially increase DM&E traffic movements over Kansas City to KCS. *See id.* at 12 (“The expected synergies that led

---

<sup>9</sup> *See* V.S. Graham at 5.

CPRC to acquire DM&E, if achieved, may increase traffic movements over DM&E to all connecting railroads, including KCS.”).<sup>10</sup>

{

*See id.*}

**Table 4**  
**SOO and DM&E trains over St. Paul – La Crescent Segment in 2009 and 2010<sup>11</sup>**

	<b>SOO 2009</b>	<b>SOO 2010</b>	<b>SOO Increase 2010 Over 2009</b>	<b>DM&amp;E 2009</b>	<b>DM&amp;E 2010</b>	<b>DM&amp;E Increase 2010 over 2009</b>
January	{ }	{ }	{ }	{ }	{ }	{ }
February	{ }	{ }	{ }	{ }	{ }	{ }
March	{ }	{ }	{ }	{ }	{ }	{ }
April	{ }	{ }	{ }	{ }	{ }	{ }
May	{ }	{ }	{ }	{ }	{ }	{ }
June	{ }	{ }	{ }	{ }	{ }	{ }
July	{ }	{ }	{ }	{ }	{ }	{ }
August	{ }	{ }	{ }	{ }	{ }	{ }
September	{ }	{ }	{ }	{ }	{ }	{ }
October	{ }	{ }	{ }	{ }	{ }	{ }
<b>Total</b>	{ }	{ }	{ }	{ }	{ }	{ }

<sup>10</sup> Ironically, KCS sought conditions in the CP/DM&E Control proceeding on the grounds that CP’s business dealings with UP would cause a combined CP/DM&E to favor interchanges with UP over interchanges with KCS. In this instance where DM&E has seized an opportunity to create a more efficient route to compete with UP’s service, the opposite has proven to be the case.

<sup>11</sup> See V.S. Graham at 6.

**D. Local 911's Current Claims**

On December 10, 2009 Jerome Ott, Chairman of Local 911, sent a letter addressed to the Chairman of the STB and to Mr. Bryan O'Boyle of the Board's Rail Customer Public Assistance Program alleging that DM&E was operating more than one daily train over the Twin Cities Trackage Rights and that these alleged operations were contrary to CP's representations in the CP/DM&E Control Proceeding. Mr. James Nelson, General Chairperson of UTU General Committee of Adjustment GO-261 and UTU's highest designated representative for all dealings with SOO, also contacted CP and the Board regarding Local 911's allegations on December 17, 2009. After learning of Mr. Nelson's concerns, SOO conducted an investigation into the allegations and met with Mr. Nelson and UTU Vice President Robert Kerley on February 2, 2010 to discuss Local 911's complaint.<sup>12</sup>

In correspondence and at the February 2, 2010 meeting, SOO explained to UTU that, contrary to Local 911's claims, DM&E was not operating more than the permitted number of trains over the Twin Cities Trackage Rights; that under the 1997 Twin Cities Trackage Rights Agreement, DM&E in fact had the right to run as many as six trains per day; and that no SOO work had been shifted to DM&E trains.<sup>13</sup> SOO agreed with UTU's representatives that, if UTU should have reason to believe that work covered by a SOO-UTU labor agreement was being improperly performed by DM&E employees, then UTU would file a claim under the agreement

---

<sup>12</sup> Local 911 expresses some pique that it was not invited to attend SOO's meetings with UTU regarding alleged misuse of DM&E's trackage rights. See Petition at 10. As discussed below in Section II.A., Local 911 does not represent any SOO employees for collective bargaining purposes. UTU is the representative of SOO's employees in the craft of conductor. To SOO's knowledge Local 911 has not been authorized to represent UTU in this matter, and therefore SOO does not and cannot lawfully negotiate with it.

<sup>13</sup> It appears that UTU investigated Local 911's claims that DM&E's trackage rights were limited to one train per day in each direction and that UTU informed Local 911 that "we are unable to find any STB decision limiting the exercise of subject trackage rights to one train per day." J. Nelson Letter to D. Towner at 1 (May 14, 2010) (attached as Petition Ex. A-3).

and SOO would expedite the processing of such a claim. *See* Verified Statement of Cathryn Frankenberg (“V.S. Frankenberg”) at 4. To date no such claim has ever been filed. Nor has any SOO employee asserted a claim for benefits under labor protective conditions imposed by the Board on the grounds of being adversely affected by DM&E’s exercise of its Twin Cities Trackage Rights. After noting that SOO had met with UTU to discuss its concerns and had presented evidence rebutting Local 911’s claims that SOO and DM&E had done anything improper, RCPA closed its inquiry into Local 911’s claims. *See* T. Brugman Letter to D. Towner (May 10, 2010) (attached as Petition Ex. K).

In its current Petition, Local 911 asserts that the operation of more than one DM&E trackage rights train in each direction over the St. Paul-La Crescent corridor is somehow prohibited by the *CP/DM&E* Decision and that SOO must negotiate an implementing agreement with Local 911 if DM&E is to operate more than one daily train in each direction over its trackage rights. Local 911’s primary argument is that, because the Operating Plan submitted in support of the Application in 2007 (correctly) noted that IC&E regularly operated two trains over its Twin Cities Trackage Rights at that time, DM&E is forbidden to add any more trackage rights trains. Local 911 also suggests that the Twin Cities Trackage Rights Agreement “should have been updated” at some point before DM&E acquired those trackage rights. Petition at 7. As demonstrated below, neither argument has any merit. But the Petition should also be rejected for the more fundamental reason that Local 911 – which is not the collective bargaining representative for any SOO employees – simply does not have the legal capacity to exercise the relief it asks the Board to grant, and that, in any event, the claim asserted in the Petition must be resolved in the first instance in arbitration under the Board’s labor protective conditions.

## II. ARGUMENT

### A. The Petition Should Be Denied Because The Claim Asserted By Local 911 Is Not Properly Before The Board.

#### 1. Local 911 Lacks Capacity To Assert Its Claim.

The Petition seeks to have the Board order SOO to negotiate an implementing agreement with Local 911 under the *New York Dock* employee protective conditions in connection with the Twin Cities Trackage Rights. The Petition must be denied for the threshold reason that Local 911 has no capacity to act on behalf of SOO's conductors and would have no role in the *New York Dock* implementing agreement process, even if an implementing agreement were required in the circumstances (which it is not). Only the collective bargaining representative of SOO conductors (UTU) can assert those employees' interests or enter into an implementing agreement on their behalf.

Local 911 is not the representative of any SOO employees for purposes of collective bargaining under the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq.* The United Transportation Union, an international labor organization headquartered in North Olmsted Falls, Ohio, is the representative of SOO's employees in the craft of conductor and in the craft of trainman. *See* V.S. Frankenberg at 2. In its bargaining with SOO, UTU is represented by and acts through the General Chairperson of General Committee of Adjustment GO-261, James H. Nelson. *See id.* Mr. Nelson is UTU's highest designated representative for all dealings with SOO. *See id.* On behalf of UTU, Mr. Nelson negotiates and interprets labor agreements governing SOO's conductors and trainmen, including those who are members of Local 911. *See id.* As noted above, Mr. Nelson met with SOO's representatives to discuss this matter in February 2010, and at that meeting the parties reached an understanding regarding the issues raised by Local 911. *See id.* at 4.

Local 911 is a subordinate local unit within UTU. *See* V.S. Frankenberg at 2. It is one of ten such subordinate local units on SOO, comprised of smaller groups of UTU-represented SOO employees clustered around various crew board locations along SOO's routes. *See id.* Local 911 does not speak for UTU in its dealings with SOO; General Chairperson Nelson does. *See id.* at 3. Local 911's only roles on SOO are that its officers may represent SOO employees in locally held investigations of employee conduct, file claims at the initial level with local SOO officers where permitted by the systemwide collective bargaining agreement, and discuss with local SOO officers matters of concern at their crew boards. *See id.* Anything else is beyond the scope of Local 911's jurisdiction and is handled by SOO with the UTU General Chairperson. *See id.* In particular, Local 911 does not have authority to collectively bargain with SOO on matters covered by the RLA, or on issues related to the interpretation and application of statutory labor protective conditions, including the *New York Dock* conditions. *See id.* at 2-3. And SOO does not negotiate labor agreements with Local 911 or its officers. *See id.* at 3.

SOO, in fact, cannot lawfully negotiate labor agreements for its conductors with anyone other than UTU. The Supreme Court held long ago that the RLA obligates a carrier to "treat with" the designated employee representative exclusively and therefore bars the carrier from negotiating with union-represented employees through any organization other than the employees' collective bargaining representative. *Virginian Ry. v. System Federation No. 40*, 300 U.S. 515 (1937).

Accordingly, even if there were to be a transfer of SOO work to DM&E that would implicate Article I, § 4 of the *New York Dock* conditions<sup>14</sup> (and there has not been), Local 911 would have no role in the process of negotiating an implementing agreement. Under Article I, § 4, if SOO contemplates taking action that would result in the dismissal or displacement of employees or that would require the “rearrangement of forces,” the railroad has to notify the affected employees and their “representatives” and then negotiate (or arbitrate) an implementing agreement. 360 I.C.C. at 85. The “representative” of SOO conductors to whom SOO would give notice and enter into an implementing agreement would be UTU General Chairperson Nelson, the conductors’ collective bargaining representative. *See* V.S. Frankenberg at 3. Local 911 would not receive such notice, could not insist on being present during negotiations, and would not be a party to any resulting implementing agreement. To the contrary, SOO could not lawfully enter into an implementing agreement with Local 911, because SOO is forbidden to negotiate a labor agreement with any entity other than the conductors’ collective bargaining representative. *See id.* at 3.<sup>15</sup>

---

<sup>14</sup> *New York Dock Ry. – Control – Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff’d New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979).

<sup>15</sup> The Board has said that employees who are *not represented* by a labor union may select an entity of their own choosing to represent them for purposes of negotiating an implementing agreement under *New York Dock*. *See Canadian National Ry. et al. – Control – Wisconsin Central Transp. Corp.*, et al., STB Finance Docket No. 34000 (served September 7, 2001). But that precept has nothing to do with this case, because SOO’s conductors *are represented* by UTU. We are aware of no authority (certainly, Local 911 cites none) that would permit an entity like Local 911 to bypass (or displace) the employees’ collective bargaining representative in order to assert the employees’ supposed interests under Article I, § 4 of *New York Dock*. Any such procedure would run afoul of *Virginian Ry.* and would serve only to undermine the union’s authority and create the chaos that the Supreme Court sought to avoid by precluding a railroad from treating with unionized employees through any entity other than the collective bargaining representative. This is all the more true given that a *New York Dock* implementing agreement could operate to change the terms of an RLA labor agreement that had been negotiated by the collective bargaining representative. *E.g., Norfolk & Western Ry. v. American Train Dispatchers Ass’n*, 499 U.S. 117 (1991).

UTU, for its part, has not supported Local 911's Petition. Further, UTU has not suggested that SOO needs to enter into a *New York Dock* implementing agreement with respect to the trackage rights operations that DM&E conducts between St. Paul and La Crescent. *See* V.S. Frankenberg at 3-4. Rather, UTU has made clear to SOO that the union is satisfied that the trackage rights operations are allowed by the original 1997 trackage rights agreement, and that nothing in the 2008 *CP/DM&E Control Decision* altered that fact. *See id.* at 4. UTU also made clear that it is aware of its right to file claims and grievances against SOO under agreed processes should UTU believe that DM&E crews were performing work reserved to SOO employees under the SOO-UTU labor agreement. *See id.* And UTU and SOO agreed on a procedure for the expedited handling of any such claims. *See id.* But neither UTU nor any SOO employee has filed such a claim. *See id.* Nor has any SOO employee filed a claim for benefits under any set of STB employee protective conditions alleging any adverse effect or impact resulting from DM&E's use of its trackage rights between St. Paul and La Crescent. *See id.*

In sum, Local 911 is attempting to pursue relief on behalf of SOO's conductors that it has no lawful capacity to pursue – because UTU, not Local 911, is the conductor's collective bargaining representative – and that the Board would have no authority to grant in any case, because SOO cannot lawfully enter into an Article I, § 4 implementing agreement with Local 911. *See Grand Trunk Western R.R. – Control – Detroit Toledo & Ironton R.R. et al.* (Arbitration Review), STB Finance Docket No. 28676 (Sub-No. 5) (served Nov. 18, 2005) (petitioners' claim that the railroad could not undertake an operational change without first entering into a *New York Dock* implementing agreement was not properly before the Board for consideration because "the protections afforded by Article I § 4(a)" are granted to employees "collectively through their duly authorized representatives," and petitioners' authorized



collective bargaining representative “has not argued that a prior implementing agreement was necessary”).

**2. The Claim Alleged In The Petition Must First Be Raised In Arbitration Under The *New York Dock* Conditions.**

Even assuming *arguendo* that the Petition had been brought by an entity with the lawful capacity to pursue the claim alleged (which it has not), the Petition must still be denied because the claim must in the first instance be resolved in arbitration under Article I, § 11 of the *New York Dock* conditions, and not before the Board.

The Board has long held that a dispute as to whether a railroad must enter into a *New York Dock* implementing agreement before undertaking a particular operational change is to be resolved through arbitration under the *New York Dock* conditions, subject to later appeal to the Board, and that the Board will not intervene in matters subject to arbitration until they are first considered by an arbitrator. These well-established principles dictate denial of Local 911’s petition. See, e.g., *Kansas City Southern Industries, Inc. et al. – Control – Gateway Western Ry., et al.* (Petition For Emergency Cease and Desist Order), STB Finance Docket No. 33311 (served Dec. 4, 1997) (denying petition for an emergency cease and desist order to stop railroad from making operational changes without first entering into a *New York Dock* implementing agreement, because question whether implementing agreement is required must as an initial matter be considered in arbitration under the protective conditions; citing *Walsh v. ICC*, 723 F.2d 570 (7th Cir. 1983)); *Illinois Central Corp. et al. – Control – CCP Holdings, Inc., et al.*, STB Fin. Docket No. 32858 (served June 2, 1998) (same); *Canadian National Ry., et al. – Control – Wisconsin Central Transp. Corp., et al.* (Petition For Injunctive Relief), STB Fin. Docket No. 34000 (served June 6, 2008) (same).

**B. DM&E Has The Right to Run As Many As Six Daily Trackage Rights Trains, and Nothing in the CP/DM&E Proceeding Limited Those Trackage Rights.**

The fundamental premise of the Petition is that either the *CP/DM&E Control Decision* or the Applicants' statements in the CP/DM&E Control Proceeding somehow modified DM&E's Twin Cities Trackage Rights in a manner that prohibits DM&E from running more than one train per day in each direction. That premise is nonsensical. In the first place, there is no doubt that the 1997 Twin Cities Trackage Rights Agreement gave IMRL (and now DM&E) the right to run as many as six trains per day over the St. Paul – La Crescent line. Nor can there be any doubt that IMRL's rights under the Twin Cities Trackage Rights Agreement passed intact to IMRL's successors-in-interest IC&E and later DM&E. Trackage rights approved by the Board do not expire of their own accord – rather, trackage rights can be terminated only if the Board grants authority for the trackage rights to be discontinued (or if the applicant qualifies for a discontinuance exemption). *See, e.g., Midtown TDR Ventures LLC – Acquisition Exemption – American Premier Underwriters, Inc. et al.*, STB Fin. Docket No. 34953 (Feb. 11, 2008) (“[T]rackage rights are not subject to termination without Board authority.” (citing *Thompson v. Texas Mexican Ry.*, 328 U.S. 134, 147-48 (1946))). Here, the Board has never modified or limited the Twin Cities Trackage Rights, and those trackage rights remain in full force and effect.

On the contrary, the Board specifically rejected Local 911's proposal in the CP/DM&E Control Proceeding that IC&E's trackage rights should be limited to one train per day in each direction. Local 911's "Petition for Enforcement" is therefore nothing of the kind. Local 911 does not seek to "enforce" the *CP/DM&E Control Decision* – instead, it wants to reverse the Board's previous decision refusing to condition its approval of the control transaction on a limitation of the Twin Cities Trackage Rights. Local 911 goes so far as to ask the Board to

grant its Petition on the theory “that the conditions Local 911 asked for in its February 28, 2008 comment letter, are not being complied with by CP.” Petition at 10.<sup>16</sup> But those conditions were squarely rejected by the Board in the *CP/DM&E Control Decision*, and it is far too late for Local 911 to ask the Board to reconsider that decision. *See* 49 C.F.R. § 1115.3(e) (petitions for reconsideration of a Board decision must be filed within 20 days). Accordingly, there is no basis for “enforcing” against CP, SOO, and DM&E the ill-conceived conditions that Local 911 failed to obtain in the control proceeding.

Much of Local 911’s Petition is dedicated to recounting sections of the Operating Plan from the Application, apparently on the theory that, because the Operating Plan contemplated that after the transaction IC&E would continue its then-existing operations of one train per day in each direction over the Twin Cities Trackage Rights, DM&E is forever barred from operating more trains than IC&E operated during 2007. Local 911’s apparent position that, once the Board approves a transaction, the applicants are perpetually bound to conduct operations precisely as outlined in their operating plan – even if the passage of years and new business opportunities require minor changes to that operating plan – is absurd, and is certainly not the law.

Forecasting future operational needs is an inherently inexact exercise. For this reason, the Board has made clear that operating plans proposed in an application for approval of a transaction may be altered after the transaction as circumstances warrant. *See Major Rail Consolidation Procedures*, 5 S.T.B. 539, 561 (2001) (“It is not our objective to hold railroads to every detail of an operating plan in implementing a proposed transaction.”); *CSX Corp. et al.* –

---

<sup>16</sup> It is telling that Local 911 attaches its previous comments in the CP/DM&E Control Proceeding as Exhibits to the Petition, apparently in an attempt to relitigate these issues. *See* Petition Exs. B and B1.

*Control and Operating Leases/Agreements – Conrail Inc. et al.*, Finance Docket No. 33388 (Sub-No. 91) (Decision No. 5) (Feb. 2, 2001) (for applicants to comply with their statutory common carrier obligation, applicants “must have the flexibility to adjust the level of train traffic over particular line segments in response to shipper demands and changing market conditions”). Indeed, the purpose of an operating plan is not to impose a perpetual straitjacket on the applicants’ operations, but rather to provide a reasonable projection of “operating changes resulting from the transaction” and “information about routing and traffic diversion resulting from consolidation.” *Illinois Cent. Corp. et al. – Control – MidSouth Corp et al.*, ICC Fin. Docket No. 31801, 1991 WL 80388, at \*5 (Feb. 20, 1991).

*Canadian National Railway Co., et al. – Control – Wisconsin Central Transportation Co. et al.*, 5 S.T.B. 890 (2001), is instructive. There, during the course of proceedings applicants represented that they did not intend to transfer or abolish certain mechanical work or mechanical positions. *Id.* at 913. Several parties then asked the Board to permanently hold applicants to that representation. The Board rejected this request, reasoning that applicants had only stated their “current intentions” and that there was “no purpose to requiring applicants to adhere to their statement of current intentions for the indefinite future.” *Id.* The Board should similarly reject Local 911’s claim that Applicants’ 2007 projection that no additional trains would be necessary to carry DM&E’s post-consolidation traffic indefinitely precludes DM&E from ever running additional trains.

There is simply no legal support for Local 911’s claim that applicants are forbidden from adding any train service that was not specifically identified in an operating plan. Indeed, if Local 911 were correct, SOO, DM&E, and IC&E would all be forbidden from making any changes to their operations as they stood on October 5, 2007, the day the Application was

filed. Such a position is irreconcilable with the well-established principle that “carrier operating flexibility . . . is essential to efficient, economical operations.” *Central Mich. Ry. Co. – Abandonment Exemption – In Saginaw Cty., MI*, STB Docket No. AB-308 (Sub-No. 3X).

Furthermore, the change at issue here – {{  
}} – is an extremely  
minor alteration to the operating plan presented by Applicants made in 2007 – and one that is  
fully consistent with Applicants’ statements elsewhere in the Application that extension of CP’s  
network to the Kansas City gateway would create opportunities for extended hauls. *See*  
Application, V.S. Green at 4; *id.*, V.S. Foot at 2, 3-4, 7. If DM&E is forbidden from {{

}}, it is hard to imagine what alterations to an operating plan would not trigger  
claims that a railroad had exceeded the operations authorized by the Board’s decision approving  
a § 11323 transaction. The Board should adhere to its reasonable policy of giving carriers  
flexibility to adjust their operations to changing conditions and new business opportunities, and it  
should firmly reject Local 911’s theory that any departure from the train roster set forth in an  
operating plan is grounds for parties to petition the Board to force railroads to conform precisely  
to an often-outdated operating plan.

**C. No SOO Employees Have Been Adversely Affected by DM&E’s Use of Its Trackage Rights.**

Finally, it should be reiterated that Local 911 has presented no evidence that any  
SOO employee has been adversely affected by DM&E’s exercise of its Twin Cities Trackage  
Rights. All the evidence is to the contrary. Local 911 has presented no evidence that any traffic  
previously handled by SOO has been diverted to DM&E trains. {{

}} {

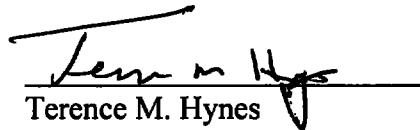
} More

importantly, no SOO employee has filed a claim for benefits under any set of STB employee protective conditions alleging that he (or she) has been adversely affected by DM&E's trackage rights operations between St. Paul and La Crescent. If a SOO employee wishes to assert such a claim, he has avenues to do so. There is no need for the Board to involve itself in this matter.

### CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,



Terence M. Hynes  
Jeffrey S. Berlin  
Mark E. Martin  
Matthew J. Warren  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
202-736-8000

*Counsel for Canadian Pacific Railway Company, Soo Line Railroad Company, and Dakota,  
Minnesota & Eastern Railroad Corporation*

Dated: November 19, 2010

# Verified Statement of Cathryn Frankenberg

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO. 35081 (SUB-NO. 1)**

---

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.  
– CONTROL –  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

---

**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY, SOO LINE RAILROAD  
COMPANY, AND DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
IN OPPOSITION TO UNITED TRANSPORTATION UNION LOCAL 911'S PETITION  
FOR ENFORCEMENT**

**VERIFIED STATEMENT OF CATHRYN FRANKENBERG**

I am Assistant Vice President Human Resources and Labor Relations-U.S., for Canadian Pacific Railway Company ("CP"). My business address is Suite 1715, 501 Marquette Avenue South, Minneapolis, MN 55402. I have been employed by Soo Line Railroad Company ("SOO"), and more recently CP, since August 1973, and have served in numerous positions including Operation Control Center Manager, Trainmaster, Director Intermodal Operations, and Manager, Director, and Vice President Labor Relations of SOO. I have held my current position since December 1, 1997.

As CP's highest U.S. designated officer for matters relating to collective bargaining agreements and the Railway Labor Act, I am responsible for, among other things, the negotiation, interpretation, and administrative oversight of collective bargaining agreements, policies, and employee protective arrangements applicable to employees of SOO and Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") who are represented by labor organizations. I also lead and direct CP's U.S. Human Resources team, with specific



accountability for employee recruiting; compensation and benefits design; implementation and administration of employee relations, diversity, and Affirmative Action programs and initiatives; performance management oversight; and the development, interpretation and communication of all employment-based policies applicable to represented and non-represented employees of CP's subsidiaries in the United States.

I am submitting this Verified Statement in support of the response of CP, SOO, and DM&E to the Petition for Enforcement filed by United Transportation Union Local 911 ("Local 911").

The United Transportation Union ("UTU") itself is an international labor organization with headquarters in North Olmsted Falls, Ohio. UTU is the representative, for purposes of collective bargaining under the Railway Labor Act, of persons employed by SOO in the "craft or class" of conductor and the "craft or class" of trainman. In its bargaining with SOO, UTU is represented by and acts through the General Chairperson of General Committee of Adjustment GO-261. The current General Chairperson is James H. Nelson. Mr. Nelson is UTU's highest designated representative for all dealings with SOO. On behalf of UTU, Mr. Nelson negotiates and interprets labor agreements governing SOO's conductors and trainmen, including those who are members of Local 911.

Local 911 is a subordinate local unit within UTU. It is one of ten such subordinate local units on SOO, which are comprised of smaller groups of UTU-represented SOO employees clustered around various crew board locations along SOO's routes. Local 911 is not the collective bargaining representative of any SOO employees. Local 911 does not have authority to bargain with SOO on matters covered by the RLA, or on issues related to the

interpretation and application of statutory labor protective conditions, including the Surface Transportation Board's *New York Dock* conditions.

Local 911 does not speak for UTU in its dealings with SOO; General Chairperson Nelson does. SOO does not negotiate labor agreements with Local 911 or its officers. SOO negotiates agreements with UTU-represented employees only through the UTU's General Chairperson, currently Mr. Nelson. Local 911's only roles on SOO are that its officers may represent SOO employees in locally held investigations of employee conduct, file claims at the initial level with local officers where the systemwide labor agreement rules permit, and discuss with local SOO officers matters of concern at their crew boards. Anything else is beyond the scope of local jurisdiction and has been historically handled by me or my staff with UTU's General Chairperson.

In the event that SOO were to engage in a transaction that might adversely affect UTU-represented employees and potentially require the negotiation of an implementing agreement under Article I, § 4 of the *New York Dock* employee protective conditions, SOO would give the required notice to, and negotiate with UTU's General Chairperson, not with Local 911. SOO would not consider giving a *New York Dock* notice to Local 911, because UTU, not Local 911, is the Railway Labor Act representative for all of SOO's conductors and other employees covered by the collective bargaining agreement between SOO and UTU. SOO would not be able to enter into an implementing agreement with Local 911, because Local 911 is not the collective bargaining representative of SOO's conductors; SOO can enter into labor agreements only with the conductors' collective bargaining representative, UTU.

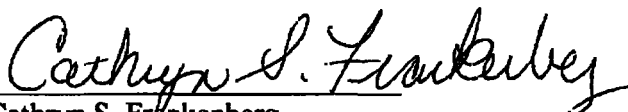
UTU has not suggested that SOO needs to enter into a *New York Dock* implementing agreement with respect to the trackage rights operations that SOO's affiliate,

DM&E, conducts over SOO territory between St. Paul and La Crescent, Minnesota. On February 2, 2010, members of my staff and I met with UTU General Chairperson Nelson and UTU Vice President Robert Kerley and discussed those trackage rights operations. The UTU representatives made clear to us that the union was satisfied that the trackage rights operations are allowed by the original 1997 trackage rights agreement, and that nothing in the 2008 CP-DM&E control transaction altered this fact. The UTU officials also advised that they were well aware of their right to file claims and grievances with SOO, under agreed processes, should UTU believe that DM&E crews were performing work reserved to SOO employees under the SOO-UTU labor agreement. We agreed that SOO would expedite the handling of any such claims if Mr. Nelson sent the claims directly to me, rather than through subordinate officials. However, neither the UTU nor any SOO employee has filed such a claim. Furthermore, no SOO employee has filed any claim for benefits, under any form of STB employee protective conditions, alleging any adverse affect or impact from DM&E's use of its trackage rights between St. Paul and La Crescent.

**VERIFICATION**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement

Executed on November 18 2010.

  
Cathryn S. Frankenberg

VERIFIED STATEMENT OF VERN GRAHAM  
PUBLIC VERSION

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO. 35081 (SUB-NO. 1)**

---

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.  
– CONTROL –  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

---

**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY, SOO LINE RAILROAD  
COMPANY, AND DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
IN OPPOSITION TO UNITED TRANSPORTATION UNION LOCAL 911'S PETITION  
FOR ENFORCEMENT**

**VERIFIED STATEMENT OF VERN GRAHAM**

My name is Vern Graham. I am Vice President Operations U.S. for Canadian Pacific Railway Company ("CP") and President of Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). My business address is 501 Marquette Avenue South, Minneapolis, MN 55402. I am making this Verified Statement in support of the Reply of CP and its U.S. carrier subsidiaries Soo Line Railroad Company ("SOO") and DM&E in opposition to the Petition for Enforcement ("Petition") filed by United Transportation Union Local 911 ("Local 911").

Local 911 alleges in its Petition that DM&E is running more trains over trackage rights DM&E possesses over SOO's lines between St. Paul, Minnesota and La Crescent, Minnesota (the "Twin Cities Trackage Rights") than were authorized in the STB's September 30, 2008 decision approving CP's acquisition of indirect control of DM&E. Local 911 is wrong. DM&E is, and has been, authorized to run as many as six trains per day over the Twin Cities Trackage Rights, and it operates far fewer trains than that limit today. In this verified statement I discuss DM&E's Twin Cities Trackage Rights and the number of trains DM&E has operated

over the Twin Cities Trackage Rights both before and after the Board approved CP's acquisition of control over DM&E. For a description of some of the new DM&E business that is traveling in trains that DM&E operates pursuant to its Twin Cities Trackage Rights, I refer the Board to the Verified Statement of John K. Brooks.

### **The Twin Cities Trackage Rights**

The Twin Cities Trackage Rights derive from an April 4, 1997 "Twin Cities Trackage Rights Agreement" in which SOO granted nonexclusive trackage rights to I&M Rail Link, LLC ("IMRL") over SOO's lines from La Crescent to St. Paul, a distance of 133.3 miles. *See* Reply Exhibit 1 at 1.3. The Twin Cities Trackage Rights Agreement authorized I&M to operate up to six trains per day over the territory covered by the agreement. *See id.* at 2.14 ("I&M's use of the Subject Trackage . . . shall not exceed on a regular basis six (6) trains per calendar day."). Iowa, Chicago & Eastern Railroad Corporation ("IC&E") succeeded to IMRL's trackage rights when it acquired the rail assets of IMRL in 2002, and DM&E in turn acquired the Twin Cities Trackage Rights when IC&E merged into DM&E in a corporate simplification transaction in December 2008.

While DM&E and SOO operate over the same St. Paul – La Crescent segment, the two railroads use that line segment for two entirely different flows of traffic. SOO uses the St. Paul – La Crescent segment as part of its generally east-west line from St. Paul to Milwaukee and Chicago. SOO trains bound for Chicago from St. Paul travel over the St. Paul – La Crescent segment and then turn east at River Junction, towards Milwaukee and then south to Chicago. DM&E, on the other hand, uses its trackage rights over the St. Paul – La Crescent segment for north-south traffic bound for DM&E-served customers at DM&E locations like Clinton, Davenport, and Muscatine, or for interchange at Kansas City. DM&E has not operated train service between St. Paul and Chicago, either before or after the CP-DM&E control transaction.

Both before and after CP acquired control over DM&E and IC&E, IC&E and later DM&E have operated daily through trains from St. Paul to Kansas City that in part utilize the Twin Cities Trackage Rights. Conversely, SOO has not operated trains between St. Paul and Kansas City since it sold its Chicago – Kansas City line to IMRL in 1997.

**DM&E's Use of the Twin Cities Trackage Rights After the CP/DM&E Transaction**

The CP/DM&E transaction closed in October 2008. After the transaction closed, IC&E, and later DM&E, continued to operate {  
 } pursuant to the Twin Cities Trackage Rights. From November 2008 through December 2009, IC&E/DM&E operated an average of { } trains per month between St. Paul and Marquette, as shown in Table 1.

**Table 1**  
**Monthly IC&E/DM&E Trackage Rights Trains:**  
**November 2008 – December 2009**

Month	IC&E/DM&E Trains
11/08	{ }
12/08	{ }
1/09	{ }
2/09	{ }
3/09	{ }
4/09	{ }
5/09	{ }
6/09	{ }
7/09	{ }
8/09	{ }
9/09	{ }
10/09	{ }
11/09	{ }
12/09	{ }
<b>Average/Month</b>	{ }
<b>Average/Day</b>	{ }



{

}

While Exhibit J to Local 911's Petition purports to show that "extra trains" are being operated by DM&E (Petition at 10), that Exhibit is demonstrably flawed. Local 911's Exhibit J is a printout of crew assignments, not trains. On any given day, a DM&E train might need to be recrewed en route, for a variety of reasons. For example, if a train is delayed by weather or congestion to the point where its crew cannot work the train to its final destination without exceeding the maximum allowable hours of service, the train must be recrewed. In these instances, a crew assignment history like the one Local 911 relies on will list the train twice – once for the original crew and once for the recrew. A significant number of the rows on Exhibit J do not correspond to separate DM&E trains, but rather to single trains that were recrewed. *See* Petition Exhibit J at 1 (four of the sixteen listed crew assignments are designated "RC" for recrew).

As detailed in the Verified Statement of John Brooks, several categories of DM&E business have rapidly expanded in recent months. {

} DM&E is operating far fewer than

6 trains per day over the Twin Cities Trackage Rights.

**Table 2**  
**DM&E Trackage Rights Trains in 2010**

	<b>DM&amp;E</b>	<b>Trains/Day</b>
January	{ }	{ }
February	{ }	{ }
March	{ }	{ }
April	{ }	{ }
May	{ }	{ }
June	{ }	{ }
July	{ }	{ }
August	{ }	{ }
September	{ }	{ }
October	{ }	{ }

{

}

**Table 3**  
**SOO and DM&E trains over St. Paul – La Crescent Segment in 2009 and 2010**

	<b>SOO 2009</b>	<b>SOO 2010</b>	<b>SOO Increase 2010 Over 2009</b>	<b>DM&amp;E 2009</b>	<b>DM&amp;E 2010</b>	<b>DM&amp;E Increase 2010 over 2009</b>
January	{ }	{ }	{ }	{ }	{ }	{ }
February	{ }	{ }	{ }	{ }	{ }	{ }
March	{ }	{ }	{ }	{ }	{ }	{ }
April	{ }	{ }	{ }	{ }	{ }	{ }
May	{ }	{ }	{ }	{ }	{ }	{ }
June	{ }	{ }	{ }	{ }	{ }	{ }
July	{ }	{ }	{ }	{ }	{ }	{ }
August	{ }	{ }	{ }	{ }	{ }	{ }
September	{ }	{ }	{ }	{ }	{ }	{ }
October	{ }	{ }	{ }	{ }	{ }	{ }
<b>Total</b>	{ }	{ }	{ }	{ }	{ }	{ }

In conclusion, Local 911's assertions are wrong. DM&E is in full compliance with the Twin Cities Trackage Rights. Operating records show that the number of DM&E trains operating over the St. Paul – La Crescent corridor is well under the agreement's limit of six trains per day. The data also shows that there has been no diversion of SOO trains to the DM&E. {

}

**VERIFICATION**

Pursuant to 28 U.S.C. §1746, I, Vern Graham, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on November 18, 2010.

  
\_\_\_\_\_  
Vern Graham

VERIFIED STATEMENT OF JOHN K. BROOKS  
PUBLIC VERSION

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO. 35081 (SUB-NO. 1)**

---

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.  
– CONTROL –  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

---

**REPLY OF CANADIAN PACIFIC RAILWAY COMPANY, SOO LINE RAILROAD  
COMPANY, AND DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
IN OPPOSITION TO UNITED TRANSPORTATION UNION LOCAL 911'S PETITION  
FOR ENFORCEMENT**

**VERIFIED STATEMENT OF JOHN K. BROOKS**

My name is John K. Brooks. I am General Manager, U.S. Grain and Biofuels for Canadian Pacific Railway Company ("CP"). My business address is 501 Marquette Avenue South, Minneapolis, MN 55402. I am making this Verified Statement in support of the Reply of CP and its U.S. carrier subsidiaries Soo Line Railroad Company ("SOO") and Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") in opposition to the Petition for Enforcement ("Petition") filed by United Transportation Union Local 911 ("Local 911").

Among other things, Local 911 alleges in its Petition that SOO traffic has been "shifted" to DM&E trackage rights trains operating pursuant to DM&E's trackage rights between St. Paul, Minnesota and La Crescent, Minnesota (the "Twin Cities Trackage Rights"). This is not accurate. On the contrary, in recent months DM&E has secured a significant amount of new business destined for (or originating from) DM&E-served locations or DM&E's interchange partners at Kansas City. SOO could not handle this business (because SOO does not serve Kansas City or customers on DM&E's lines).

**PUBLIC VERSION**

As explained in the Verified Statement of Vern Graham, while DM&E is operating far fewer trains than it is authorized to operate over the Twin Cities Trackage Rights,

{

} {{

}} {

}

Since the CP/DM&E transaction, CP, SOO, and DM&E have continued to work to identify new business opportunities. {{

}}

{{

}}

{{

}}

{{

}} In

fact, a substantial portion of {{ }} is grain traffic. Table 1 illustrates that DM&E grain traffic over St. Paul has {{ }} from 2008 to 2010.



**Table 1**  
**DM&E Wheat, Grain, and Agricultural Carloads From/To St. Paul**

	Total Carloads
August 2008 – October 2008	{{      }}
August 2009 – October 2009	{{      }}
August 2010 – October 2010	{{      }}

{{

}}

{{

}}

**VERIFICATION**

Pursuant to 28 U.S.C. §1746, I, John K. Brooks, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on November 18, 2010.

  
John K. Brooks

**EXHIBIT 1**

**REDACTED – PUBLIC VERSION**

**TWIN CITIES TRACKAGE RIGHTS AGREEMENT**

**between**

**SOO LINE RAILROAD COMPANY  
d/b/a CANADIAN PACIFIC RAILWAY**

**and**

**I&M RAIL LINK, LLC**

## **TWIN CITIES TRACKAGE RIGHTS AGREEMENT**

THIS AGREEMENT dated \_\_\_\_\_, 1997 is made between I&M Rail Link, LLC, a Delaware limited liability company ("I&M"), and Soo Line Railroad Company, d/b/a Canadian Pacific Railway, a Minnesota corporation ("CPR"), sometimes collectively referred to below as "Parties," or individually as a "Party."

### **RECITALS**

1. CPR owns a line of railway which extends 133.3 miles between a connection with I&M at La Crescent, Minnesota (Milepost 159.0 on CPR's Dubuque Subdivision) and Merriam Park, Minnesota (Milepost 416.3). I&M desires to use this line for the operation of its trains. CPR is willing to allow such use on the terms and conditions set forth below; and

2. CPR and The Burlington Northern and Santa Fe Railway Company ("BN") are parties to that certain Paired Track Agreement, dated May 28, 1902, as amended (the "Paired Track Agreement").

IN CONSIDERATION of the mutual and dependent covenants by each of the Parties, they have agreed as follows:

### **Section 1. GRANT OF RIGHTS**

1.1 (a) Attached to, incorporated in and made a part of this Agreement is a print dated November 14, 1996, marked Exhibit A, which shows in solid red line the "Subject Trackage" between point "A" at La Crescent, Minnesota (the division of ownership with I&M at Milepost 159.0 on CPR's current Dubuque Subdivision); point "B" at Milepost 392.1 at Hastings, Minnesota (the beginning of paired trackage with BN); point "C" at Division Street at Milepost 408.9 in St. Paul, Minnesota (the end of BN paired trackage); and point "D" at CPR Milepost 416.3 on its Merriam Park Subdivision at Merriam Park, Minnesota (the

division of ownership with MT Properties, Inc.). The term "Subject Trackage" includes all of CPR's trackage, track connections, facilities and appurtenances, signals and switches located between points A and B and C and D. The term "BN Subject Trackage" includes all CPR trackage, BN trackage, track connections, facilities and appurtenances, signals and switches located between points B and C. Subject to the terms and conditions contained in this Agreement, CPR grants to I&M trackage rights for the nonexclusive use of the Subject Trackage and the BN Subject Trackage for the operations of its trains, locomotives, cabooses, and loaded and empty cars, including track inspection cars and work or wreck equipment in its account, over the Subject Trackage and the BN Subject Trackage in common with BN and CPR, and such other railroad company or companies as BN or CPR has prior to the date of this Agreement admitted or may at any time in the future admit to the use of all or any part of the Subject Trackage or the BN Subject Trackage. I&M shall have the right to operate direct deliveries to, and directly pick up received interchange from other carriers at St. Paul, Minnesota, but only via MT Properties, Inc. (and the successors and assigns of MT Properties, Inc.) and its designated operator, the Minnesota Commercial Railroad Company ("MNNR") (and the successors and assigns of MNNR) at Merriam Park and shall have the right to interchange solid trains (minimum 46 cars) to either the BN at Dayton's Bluff or the Union Pacific Railroad Company ("UP") at its Hoffman Yard adjacent to the St. Paul Yard; and further provided, that I&M may not handle on the Subject Trackage or the BN Subject Trackage "Overhead Traffic" as defined in Section 1.3(a) hereof.

(b) CPR represents and warrants that the Paired Track Agreement is in full force and effect, and neither CPR, nor to CPR's knowledge BN, is in default of its obligations under the Paired Track Agreement.

1.2 It is understood between the Parties that in order for I&M to reach MNRR with its own power and crews, I&M is required to use the BN Subject Trackage on the terms and conditions set forth herein. Following the effective date of this Agreement, I&M agrees to use its best efforts to obtain trackage rights directly from BN, on terms and conditions no less favorable than set forth herein, over the BN Subject Trackage. CPR agrees to use its good offices to assist I&M in obtaining such trackage rights. In the event that I&M is unable to obtain trackage rights over the BN Subject Trackage from BN, in the alternative CPR warrants that it has the right, without the consent of BN, to grant to I&M the rights contained herein. In the event any third party (including without limitation BN) takes the position that the CPR does not have the right to grant the rights described in this Agreement or that the use of the BN Subject Trackage as contemplated herein is not permitted, then (i) CPR shall cooperate with I&M in any judicial or regulatory proceeding in which such position is asserted, (ii) at the request of I&M, CPR shall participate in such proceeding in support of I&M at CPR's expense, and (iii) CPR shall not take any position that is inconsistent with the grant of rights in this Agreement. In the event that it is determined in a regulatory or judicial proceeding or otherwise that CPR may not exercise all or any portion of the rights granted hereunder, CPR shall take such actions and grant such rights (the "Modified Rights") so as to enable I&M to provide service on economic and service terms that shall duplicate to the extent possible the service that I&M could have provided if the rights granted in this Agreement had been fully exercisable. The Modified Rights shall

include, to the extent possible, (x) interchange with CPR at the closest mutually agreed location to St. Paul Yard, and (y) a modification to the division received by I&M on traffic interchanged by I&M and CPR at St. Paul Yard under the Division Agreement between CPR and I&M, of even date herewith, so as to provide I&M with substantially the same net contribution on such traffic that I&M would have received if it were exercising the rights granted in this Agreement. CPR shall not agree to any amendment or modification to the Paired Track Agreement that would have a material adverse effect on I&M's operation or would result in I&M incurring any material cost or expense obligation unless such amendment or modification is applicable on the same basis to CPR; provided, that CPR shall not terminate the Paired Track Agreement or amend such agreement in a manner that would be tantamount to termination without making arrangements to ensure I&M's continued operation on the BN Subject Trackage substantially as contemplated in this Agreement. In the event CPR sells, leases or otherwise conveys all or any portion of its interest in the BN Subject Trackage or any other trackage owned by CPR, or in the event CPR assigns all or any portion of its rights under the Paired Track Agreement, such sale, lease, conveyance or assignment shall be subject to the terms and conditions of this Agreement, and CPR shall take all necessary and appropriate steps to ensure that any such transaction shall not materially impair I&M's operations or cause I&M to incur any material cost or expense.

1.3 I&M shall not have the right, except as otherwise provided in this Section 1 to:

- (a) Except as set forth in the proviso in Section 1.3(c), handle any Overhead Traffic whatsoever on the Subject Trackage or the BN Subject Trackage. For purposes of this provision, "Overhead Traffic" shall mean any traffic originating at,



terminating at or moving through the Twin Cities Terminal Switching District (as defined on the map attached hereto as Exhibit B) and not ultimately destined to or originating at (1) consignors or consignees physically located on trackage acquired by I&M from CPR or (2) points both south and west of the intersection of the latitude of Comus, Minnesota and the longitude of Davenport, Iowa.

- (b) Serve any industry, team or house track now existing or located at any time in the future along the Subject Trackage or the BN Subject Trackage;
- (c) Permit or admit any third party to the use of all or any part of the Subject Trackage or BN Subject Trackage, nor under the guise of doing its own business, contract, or make any agreement to handle as its own, over the Subject Trackage or BN Subject Trackage, the trains, locomotives, cabooses or cars of any third party which would not be considered the trains, locomotives, cabooses or cars of I&M; provided, that this Section 1.3(c) shall not be construed as prohibiting I&M from handling cars in the account of BN from Merriam Park to La Crescent, which cars will then move over I&M from La Crescent to Chicago under a haulage arrangement between I&M and BN entered into as referenced in the Asset Purchase Agreement between the Parties, dated January 15, 1997 (the "APA").
- (d) Construct tracks connecting to the Subject Trackage or BN Subject Trackage without the written consent of CPR. Any tracks constructed by CPR connecting to the Subject Trackage subsequent to the date of this Agreement

shall be used by I&M equally with CPR for any purpose granted to I&M by the terms of this Agreement, unless the Parties agree otherwise;

- (e) Except as set forth in the provision in Section 1.3(c), interchange with other carriers connecting at any point to the Subject Trackage or BN Subject Trackage, other than as specifically authorized in Section 1.1 hereof; or
- (f) Enter or exit the Subject Trackage or the BN Subject Trackage at any point other than the specific end points identified in this Agreement.

1.4 I&M agrees not to seek trackage rights, terminal rights, access to industries or interchange with other carriers over the Subject Trackage or BN Subject Trackage, other than those provided in this Agreement, under 49 U.S.C. sec. 11103 or any other law or regulation now in force or subsequently enacted or promulgated.

1.5 In the event I&M breaches the covenants contained in Sections 1.3(a) or 1.4, the Parties agree that actual damages would be difficult and speculative to ascertain, and therefore the Parties agree that I&M shall pay to CPR as liquidated damages ("Liquidated Damages") as compensation for traffic diversions, {{ [REDACTED] }} per car for each car so handled, subject to escalation as provided for in Appendix A attached hereto.

**Section 2. CONSTRUCTION, REPAIR, MAINTENANCE, ADDITIONS TO, OPERATION AND CONTROL OF THE SUBJECT TRackage**

2.1 The construction, maintenance, repair and renewal of the Subject Trackage and BN Subject Trackage shall be under the exclusive direction and control of CPR or BN, as the case may be. CPR shall make any additions to the Subject Trackage which CPR deems necessary or desirable for the safe, efficient, and economical use of the Subject Trackage or the BN Subject

Trackage by the Parties, and these shall become part of the Subject Trackage or the BN Subject Trackage upon completion of construction. If I&M requests construction of additions or improvements to the Subject Trackage, or the CPR-owned portion of the BN Subject Trackage, CPR may agree to make additions or improvements for the benefit of both, and compensation by I&M to CPR for the additions and improvements shall be agreed to by the Parties prior to CPR making such additions and improvements. CPR shall not unreasonably deny the request of I&M for additions or improvements to the Subject Trackage; provided that I&M shall have no right to request improvements to the BN Subject Trackage except as provided in the Paired Track Agreement. Additions and improvements to the Subject Trackage or the CPR-owned portion of the BN Subject Trackage constructed at the sole expense of either Party shall be owned by CPR. I&M shall have the right to request that CPR submit a request to BN for additions or improvements to the BN Subject Trackage to the extent CPR has the right to do so under the Paired Track Agreement. In connection with any such request, the Parties will agree upon their respective share of the expense of such additions or improvements prior to submission of the request to BN. CPR shall not unreasonably deny a request by I&M that CPR submit a request to BN regarding construction of additions or improvements to the BN Trackage.

2.2 The management and operation of the Subject Trackage shall be under the exclusive direction and control of CPR. CPR shall have the unrestricted right to change the management of and operations on and over the Subject Trackage as in its judgment may be necessary, expedient or proper for the operation of the Subject Trackage pursuant to this Agreement; provided that any such change shall not materially interfere with I&M's right to use the Subject Trackage for the purpose defined in Section 1. Dispatching on the Subject Trackage

will be provided by CPR on a nondiscriminatory basis as between the Parties. From time to time during the term of the Agreement, CPR shall, upon request of I&M, issue written instructions to its dispatching personnel to treat I&M trains as if such trains were CPR trains. Dispatching control of the BN Subject Trackage shall be under the exclusive direction and control of BN .

2.3 (a) CPR shall employ all persons necessary to operate, maintain, repair and renew the Subject Trackage and the CPR-owned portion of the BN Subject Trackage. CPR shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair, renewal and management of the Subject Trackage and the CPR-owned portion of the BN Subject Trackage and I&M shall not, by reason of CPR's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of Subject Trackage and the CPR-owned portion of the BN Subject Trackage, have or make against CPR any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from CPR's performance, failure or neglect, except as otherwise provided in Section 4.

(b) The operation, maintenance, repair and renewal of the BN-owned portion of the BN Subject Trackage shall be undertaken as set forth in the Paired Track Agreement. Liability arising in connection with the operation, maintenance, repair and renewal of the BN Subject Trackage, as between BN and the Parties hereto shall in the first instance be allocated as set forth in the Paired Track Agreement and the Parties' share shall then be allocated between them as set forth herein.

**2.4** I&M, at its expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of CPR, for the safe and efficient operation of trains over the Subject Trackage, and as may now or in the future be necessary or appropriate, in the reasonable judgment of BN for the safe and efficient operation of trains over the BN Subject Trackage.

**2.5** If the use of the Subject Trackage or the CPR-owned portion of the BN Subject Trackage is at any time interrupted, or traffic over the Subject Trackage or the CPR-owned portion of the BN Subject Trackage is delayed for any cause, CPR shall, with reasonable diligence, restore the line for the passage of trains of the Parties. Neither Party shall have or make any claim against the other for loss or damage of any kind resulting from such interruption or delay.

**2.6** Each Party shall be responsible for furnishing, at its own expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Subject Trackage or the BN Subject Trackage.

**2.7** The operation of I&M over the Subject Trackage shall at all times be in accordance with the rules, instructions and restrictions of CPR ("Rules"), and over the BN Subject Trackage the rules, instructions and restrictions of the BN ("BN Rules"), but such Rules shall be reasonable, just and fair between all parties using the Subject Trackage and shall not discriminate against any of them. These Rules shall include, but not be limited to, Operating Rules, Time Tables, Special Instructions, Bulletins, General Orders and authoritative directions of train dispatchers and operating officers.

**2.8** I&M shall be responsible for all mileage allowances and car hire charges accruing on cars in I&M's account on the Subject Trackage and BN Subject Trackage and I&M shall report and pay the allowances and charges directly to the owners of such cars.

**2.9** All employees of I&M engaged in the operation of I&M trains over the Subject Trackage or the BN Subject Trackage shall be required to qualify for entry onto the Subject Trackage or the BN Subject Trackage by passing periodic examination on the Rules of CPR, (or with respect to the BN Subject Trackage, such examination as shall be required by the Paired Track Agreement) provided that with respect to such examinations, upon request of I&M, CPR shall qualify one or more of I&M's supervisory officers who will then examine and certify to CPR the qualification of I&M's employees. In addition to examination, CPR may condition qualification of I&M's employees under this provision upon the completion of a reasonable number of trips over the Subject Trackage or the BN Subject Trackage piloted by a qualified employee, and require that such qualification trips be repeated if the subject I&M employee has not made a trip over the Subject Trackage or the BN Subject Trackage within a reasonable preceding period of time. Pending qualifications of subject employees, CPR shall furnish a pilot or pilots, at the expense of I&M, to allow operation as contemplated in this Agreement. For purposes of Section 4 of this Agreement, any employee of CPR acting as a pilot for I&M will be considered a sole employee of I&M.

**2.10** If any employee of I&M, in the sole opinion of CPR, neglects, refuses or fails to abide by CPR's Rules or BN Rules governing the operation over the Subject Trackage or the BN Subject Trackage, CPR shall in writing so notify I&M. CPR shall have the right to require I&M to withhold any I&M employee from service over the Subject Trackage or the BN Subject

Trackage pending the result of formal investigation of the alleged neglect, refusal or failure. After the notice is given to I&M, CPR and I&M (and/or BN, if appropriate) shall promptly hold a joint investigation, in which each of the Parties shall bear its own expense for its own employees and witnesses. Notice of such investigation to I&M employees shall be given by I&M officers, and failure to give proper notice shall not bar CPR from restricting the subject I&M employees. The investigation shall be conducted in accordance with the terms and conditions of schedule agreements between I&M and its employees, but failure by I&M to comply with schedule agreements shall not bar CPR from restricting subject I&M employees. If, in the sole judgment of CPR, the result of such investigation warrants, any subject I&M employee so investigated, or who I&M has failed to investigate after proper notice under this Agreement, shall be restricted by I&M from operating on the Subject Trackage or the BN Subject Trackage. CPR shall not unreasonably exercise this right of restriction. I&M shall release and indemnify CPR from and against any and all claims and expenses because of such restriction; provided, that if the employee challenges the investigation or restriction to an arbitration board and such arbitration board sustains the employee's claim and reinstates such employee to full service, CPR shall honor the terms of the arbitration award and use reasonable efforts to cause BN to do likewise if the employee has been restricted from operating on the BN Subject Trackage.

2.11 If any cars, cabooses, or locomotives of I&M are bad ordered en route on the Subject Trackage or the BN Subject Trackage and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by I&M. CPR may upon request of I&M and at I&M's expense furnish required labor and material to

perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in the Field and Office Manuals of the Interchange Rules of the Association of American Railroads (the "Interchange Rules"). CPR shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items as called for by the Interchange Rules, and shall prepare and submit billing to and collect from I&M for handling-line responsibility items under the Interchange Rules. If CPR performs repairs to I&M equipment other than freight cars, CPR shall prepare and submit billing directly to and collect from I&M. For purposes of Section 4 of this Agreement, any employee of CPR performing repairs to I&M's equipment will be considered a sole employee of I&M.

2.12 I&M acknowledges that the operation, construction, maintenance, repair and renewal of the BN Subject Trackage is subject to the joint control of BN and CPR, on terms as established by the Paired Track Agreement. I&M agrees that it shall use the BN Subject Trackage consistent with the requirements of both this Agreement and the Paired Track Agreement.

2.13 Each of I&M's trains operated on and over any portion of the Subject Trackage and BN Subject Trackage shall be subject to the following specific requirements: (i) each such train shall have the locomotive horsepower necessary to meet the requirements of the tonnage ratings in the current Special Instructions to the Operating Timetable of CPR on the subdivision including the Subject Trackage and BN Subject Trackage; (ii) each such train shall be powered in a manner sufficient to operate at maximum authorized timetable speeds on such subdivision; (iii) each such train shall not exceed the reasonable train length restrictions established by CPR from



time to time on such subdivision; (iv) each such train shall be equipped with radios and other communications and signal devices that comply with the reasonable requirements established by CPR from time to time; and (v) prior to commencement of operation, the locomotive of each such train shall be fueled, oiled, sanded, supplied and serviced so that passage over the Subject Trackage and BN Subject Trackage can be completed without interruption.

2.14 I&M's use of the Subject Trackage and the BN Subject Trackage shall not exceed on a regular basis six (6) trains per calendar day. At such time as I&M's use reaches this limitation, or if CPR's or BN's use or the use of other parties lawfully admitted to the Subject Trackage or the BN Subject Trackage has increased to the point where the capacity of such trackage is or will soon become inadequate to accommodate the desired use of the Parties hereto, either Party shall have the right to serve notice upon the other and to schedule a conference with the other Party within twenty (20) days of such notice, to discuss the capacity limitations of the Subject Trackage or the BN Subject Trackage and the potential solutions thereto. Within sixty (60) days of the initially scheduled conference, the Parties shall agree upon the most cost efficient engineering or operating solution to the capacity limitation of the Subject Trackage or the BN Subject Trackage. Thereafter, CPR shall use its best efforts to have BN take such action as is necessary to implement the agreed solution and I&M shall use its best efforts to support CPR in this effort or if the solution does not involve the BN, to itself take all action necessary to promptly implement the agreed solution. The Parties share of the cost for the agreed solution shall be divided between them pursuant to the principle that the Party requiring such capacity increase shall pay for the same, and to the extent that both Parties require the capacity increase they shall share proportionately.

### **Section 3.     COMPENSATION AND BILLING**

**3.1**     I&M shall pay CPR monthly during the term of this Agreement an amount equal to the sum computed by the method set forth in Appendix A, which is hereby incorporated by reference and made a part of this Agreement and all other amounts due hereunder.

**3.2**     Except as otherwise specifically provided for, bills rendered pursuant to this Agreement shall be prepared in conformity with the then-current reasonable billing practices of CPR. The Parties agree to furnish to each other any data necessary for billing or the auditing of bills. I&M agrees to pay CPR billings within thirty (30) days after receiving them at its disbursements office or at such other location as I&M may from time to time direct. The payment of bills shall not be delayed nor payment refused or shorted on payment of the face amount of bills rendered because of errors in supporting details that are not serious and important, but bills shall be paid as rendered and exception taken in writing addressed to the officer of CPR responsible for the issuance of the bill. CPR will adjust the next subsequent billing if the exception is valid. No exception to any bill shall be honored if filed after two (2) years from the last day of the calendar month during which the bill was rendered.

**3.3**     The records of each Party pertaining to this Agreement shall be open to inspection by representatives of the other Party upon reasonable notice, during regular office hours.

**3.4**     Waiver of a default in any one or more instances shall not be construed as a waiver in any other instance. Failure of a Party to enforce its remedies in any one or more instances shall not constitute a waiver of the right to enforce its remedies in any other instance.

#### **Section 4.     LIABILITY**

Whenever the expression "Loss or Damage" is used in this Agreement, it means (i) injury to or death of any person, including employees of the Parties hereto, and loss of or damage to any property, including property of the Parties hereto, which arises out of incidents occurring in the performance of this Agreement, (ii) liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, (iii) all costs and expenses incident to such claims, suits, demands, and judgments, including attorneys' fees, court costs, and other costs of investigation and litigation, (iv) exemplary or punitive damages (except to the extent such damages are awarded based upon the wrongful intentional act of the indemnified party), and (v) the costs of environmental protection, mitigation or cleanup necessitated by the incident. Loss or Damage shall be reduced by any amount recovered by the Indemnified Party from third parties.

Definition: Whenever the expression "proportionally by the Parties" is used in this Section 4, it means that expenses will be borne in proportion to the ton-miles handled by each Party in the zone (as set forth on Appendix B hereto) of the Subject Trackage where any Loss or Damage occurs (for purposes of this allocation, the ton-mile of any other third party admitted by CPR shall be deemed to be the ton-miles of CPR) during the three calendar months prior to the month of the occurrence, or if the occurrence is in any of the first three (3) months of operation under this Agreement, such lesser period as precedes the date of occurrence.

Except as provided above, for purposes of this Agreement, locomotives, trains, cars, cabooses and property of BN or third parties admitted to the use of the Subject Trackage by CPR or BN shall not be deemed locomotives, trains, cars, cabooses or property of either Party hereto.

**4.1** The Parties shall undertake to comply with all applicable federal, state and local laws or regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of any Party to comply with such laws, rules, regulations or orders in respect to the use of the Subject Trackage or the BN Subject Trackage results in any fine, penalty, cost or charge being assessed against the other Party, the Party which failed to comply agrees to reimburse promptly and indemnify the other Party for such amount.

**4.2** The employees of CPR while maintaining or directing operations along the Subject Trackage shall not be considered as joint employees but will remain the sole employees of CPR. Except to the extent expressly provided otherwise herein, all operating employees of each Party will be treated as the sole employees of such Party.

**4.3** Liability for Loss or Damage resulting from or in connection with the operation of trains, locomotives, cars, cabooses or maintenance-of-way motorized equipment owned by or in the account of either Party ("Equipment"), or in direct connection with the presence on the Subject Trackage or BN Subject Trackage of Equipment or property of either Party, shall be borne and paid by the Parties as follows:

- (a) When the same shall directly involve the Equipment of only one of the Parties, regardless of any third party involvement, all Loss or Damage, including but not limited to, restoration and repair of the Subject Trackage or BN Subject Trackage, will be borne by that Party; provided, that if an incident causing Loss or Damage involving the Equipment of only one of the Parties is caused solely by the wrongful intentional act of one or more of the sole employee(s) of one Party, the

Party whose sole employee(s) caused such incident shall bear all Loss or Damage in connection therewith; provided further, that employee injuries that are not caused by contact between Equipment and an employee shall be the responsibility of the Party that employs such employee.

- (b) When the same shall directly involve the Equipment of both of the Parties, Loss or Damage shall be borne by each Party as to its own employees, property, or property in its custody (except for damage to the Subject Trackage or BN Subject Trackage), and as to third-party persons or property, or the Subject Trackage, Loss or Damage shall be borne equally by the Parties; provided, that if an incident causing Loss or Damage involving the Equipment of both of the Parties is caused solely by the wrongful intentional act of one or more sole employee(s) of one Party, the Party whose sole employee(s) so caused such incident shall bear all Loss or Damage in connection therewith.
- (c) In the event of liability for injuries or death of third parties or damage or destruction to the property of third parties while on or about the Subject Trackage or the BN Subject Trackage not involving the Equipment of either Party, or where the identify of the Equipment involved in unknown, the claim will be handled or settled on behalf of both Parties by CPR and the Loss or Damage will be borne proportionally by the Parties.
- (d) Notwithstanding any provision to the contrary herein, the allocation of Loss or Damage in connection with Equipment that is handled over the Subject Trackage

or the BN Subject Trackage and that is subject to a haulage agreement between the Parties shall be as set forth in such agreement.

**4.4** To the extent that Loss or Damage arising on or in connection with the Subject Trackage is not allocated under this Agreement, liability in connection therewith shall be allocated in accordance with applicable law.

**4.5** The liability for Loss or Damage arising on or in connection with the BN Subject Trackage shall be allocated among CPR, I&M, BN and third parties admitted to use of the BN Subject Trackage as provided under the Paired Track Agreement in the first instance. Then, as between CPR and I&M, the aggregate liability of the Parties for Loss or Damage shall be allocated as provided in Sections 4.1, 4.2 and 4.3 hereof; provided, that to the extent liability arises under the Paired Track Agreement in connection with an incident that would not be covered by Section 4.3 hereof, the liability for such Loss or Damage shall be allocated proportionally between the Parties.

**4.6** Each Party agrees that it will pay for all loss, damage and expense, the risk of which it has herein assumed, the judgment of any court to the contrary notwithstanding, and will forever indemnify and save harmless the other Party, its successors and assigns, from any such judgment, loss, damage or expense, irrespective of the negligence or other fault attributable to either Party hereto (except as intentional wrongdoing is relevant to the allocation of liability hereunder). The Parties specifically agree to indemnify and hold harmless the other Party with respect to any Loss or Damage resulting from that other Party's negligence, to the extent necessary to effectuate the risk allocations established by this Agreement.

4.7 In the event both Parties shall be liable under this Agreement for Loss or Damage, and the same shall be compromised and settled, the settling Party shall obtain a valid and enforceable release from liability for both Parties, specifically naming Canadian Pacific Railway Company, Soo Line Railroad Company, Soo Line Corporation, I&M Rail Link, LLC, Montana Rail Link, Inc., and their respective parents, subsidiaries and affiliated companies, and all of their officers, agents, and employees. No Party shall make any such compromise or settlement in excess of {{ [REDACTED] }} without prior, written authority of the other Parties having liability, but any settlement made by one Party in consideration of {{ [REDACTED] [REDACTED] }} or less shall be a settlement releasing all liability of all Parties and shall be binding upon all Parties.

4.8 The obligations and liabilities of I&M and of CPR hereunder with respect to their respective indemnities pursuant to this Section 4 resulting from any claim or other assertion of liability by third parties (hereinafter called collectively, "Third Party Claims"), shall be subject to the following terms and conditions:

(a) The party seeking indemnification (the "Indemnified Party") must give the other party (the "Indemnifying Party") written notice of any such claim within ninety (90) days after the Indemnified Party receives notice thereof.

(b) The Indemnifying Party shall have the right to undertake, by counsel or other representatives of its own choosing and reasonably acceptable to the Indemnified Party, the defense of such claim at the Indemnifying Party's cost and risk.

(c) In the event that the Indemnifying Party shall elect not to undertake such defense, or within a reasonable time after notice of any such claim from the Indemnified Party shall fail to

defend, the Indemnified Party (upon further written notice to the Indemnifying Party) shall have the right on behalf of and for the account and risk of the Indemnifying Party to undertake the defense, compromise or settlement of such Third Party Claim by counsel or other representatives of the Indemnified Party's own choosing. In such event, the Indemnifying Party shall pay to the Indemnified Party, in addition to any other sums required to be paid hereunder, the costs and expenses incurred by the Indemnified Party in connection with such defense, compromise or settlement as and when such costs and expenses are so incurred.

(d) Anything in this Section 4.8 to the contrary notwithstanding, (i) if there is a reasonable probability that a claim may materially and adversely affect the Indemnified Party, the Indemnified Party shall have the right, at its own cost and expense, to participate in the defense, compromise or settlement of the claim, (ii) the Indemnifying Party shall not, without the Indemnified Party's written consent, settle or compromise any claim or consent to entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all liability in respect of such claim in a form reasonably satisfactory to the Indemnifying Party, (iii) in the event that the Indemnifying Party undertakes defense of any claim, the Indemnified Party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the Indemnifying Party and its counsel or other representatives concerning such claim and the Indemnifying Party and the Indemnified Party and their respective counsel or other representatives shall cooperate with respect to such claim, and (iv) in the event that the Indemnifying Party undertakes defense of any claim, the Indemnifying Party shall have an obligation to keep the Indemnified Party informed of the status of the defense of such claim and



furnish the Indemnified Party with all documents, instruments, and information that the Indemnified Party shall reasonably request in connection therewith. Notwithstanding the foregoing, in the event the Indemnifying Party undertakes the defense of any claim, the Indemnified Party shall have the right to employ its own counsel at the Indemnified Party's expense if the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party that there may be one or more specific defenses available to it which are different from or additional to those available to the Indemnifying Party.

4.9 If Equipment of either Party is wrecked or derailed on the Subject Trackage, the Party responsible under the terms of this Section 4 shall bear the entire cost of such service. If Equipment of either Party is wrecked or derailed on the BN Subject Trackage, the liability in connection therewith will be allocated in the first instance as provided in the Paired Track Agreement and then divided between the Parties as provided herein.

4.10 It is understood and agreed that a number of vehicular crossings on the Subject Trackage and BN Subject Trackage presently exist, or may be constructed. I&M agrees to accept all crossings in whatever condition they may be during the term of this Agreement and will not assert any claim, demand or cause of action against CPR and will hold CPR harmless from any claim, demand or cause of action arising out of any crossing accident on the Subject Trackage or BN Subject Trackage in which the Equipment of I&M only is involved (except to the extent that Loss or Damage in connection therewith arises solely out of the wrongful intentional acts of sole employees of CPR during the term hereof).

4.11 Detour of foreign line equipment under Standard Industry Detour Agreements over the Subject Trackage or BN Subject Trackage is at the sole discretion and permission of CPR.

## Section 5. INSURANCE

5.1 Except to the extent provided otherwise in Section 5.8 of the APA for calendar years 1997, 1998 and 1999, I&M, at its own cost or expense, will procure and maintain in effect during the term of this Agreement, a policy or policies of insurance covering the liability to which I&M is or may be subject under this Agreement. Such policy shall name CPR as an additional insured and contain a cross-liability endorsement evidencing that such insurance shall apply to I&M and CPR in the same manner and to the same extent as if a separate policy had been issued to each (except with respect to the limit of liability), which policy shall provide the following total insurance coverage: Third party liability, including contractual liability, covering injury to or death of persons and damage to property in any one occurrence in the amount of not less than {{ [REDACTED] }} with a maximum self-insured retention of {{ [REDACTED] }} per occurrence (or such other amount as the parties shall agree is reasonable under the circumstances). Such coverage shall include all employees and shall insure named insureds against workmen's compensation and Federal Employer's Liability Act claims. CPR agrees to cooperate in the processing of insurance claims. Notwithstanding the foregoing, CPR agrees that it shall not make any insurance claims under the I&M policies obtained pursuant to this Section 5.1 for Loss or Damage the liability for which is allocated to CPR under Section 4 hereof.

**5.2** If the insurance procured by I&M, pursuant to this Section, takes the form of a claims-made policy and is canceled or allowed to expire without renewal, I&M will provide evidence of insurance that provides per occurrence and annual aggregate limits not less than those required pursuant to Section 5.1. Such coverage must be retroactive to the original inception date of the canceled or non-renewed policy. I&M further agrees promptly to give written notice to CPR's Director of Risk Management, 910 Peel Street, Room C-23, P. O. Box 6042, Stn Centre-Ville, A, Windsor Station, Montreal, Quebec H3C 3E4, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

**5.3** At any time not less than sixty (60) days prior to an anniversary date of this Agreement, CPR, in consideration of current and reasonably anticipated claims and litigation costs, and taking into account conditions in the insurance market and industry practice of regional railroads comparable to I&M, may notify I&M of CPR's intent to increase the amount of insurance required by this Agreement or to require that the terms and conditions of such insurance be modified. Should I&M object to any such increase or modification, I&M and CPR will attempt in good faith to negotiate a resolution of their disagreement. If I&M and CPR are not able to agree and such disagreement continues for thirty (30) days past the anniversary date of this Agreement, then the matter or matters in disagreement will be submitted to arbitration pursuant to Section 6 hereof.

**5.4** Each policy of insurance obtained by I&M pursuant to the requirement of this Section will contain provisions requiring that the insurance carrier give CPR, through the CP Rail's Director of Risk Management, at least thirty (30) days' notice in writing of any proposed

policy cancellation or any modification of the terms and conditions of any policy of insurance I&M is required to provide under this Section.

5.5 The terms and conditions of each policy of insurance obtained by I&M to satisfy the requirements of this Section will be subject to the approval of CPR, which approval shall not be unreasonably withheld or delayed. On or prior to the effective date of this Agreement pursuant to Section 8.2 of this Agreement, I&M will furnish to CP Rail's Director of Risk Management an accurate copy of each policy of insurance obtained pursuant to the requirements of this Section. Neither compliance with this requirement nor CPR's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of I&M to procure the specific insurance coverage required by this Section.

5.6 In the event I&M fails to maintain the levels of insurance coverage required in this Section, or fails to properly notify CPR of said coverage, after giving I&M written notice of noncompliance and ten (10) days from receipt of such notice within which to comply, CPR may require I&M to suspend operations over the Subject Trackage and BN Subject Trackage until such time as I&M complies with the insurance requirements hereunder or otherwise provides CPR evidence of financial responsibility acceptable to CPR in its sole discretion.

## **Section 6. ARBITRATION**

6.1 Any irreconcilable dispute arising between the Parties with respect to this Agreement involving {{ [REDACTED] }} or less shall be settled through binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). If the Parties agree on an arbitrator, such arbitrator shall determine the

dispute. If the Parties fail to agree on an arbitrator, the dispute shall be determined by a single arbitrator selected pursuant to the rules of the AAA. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the Parties.

**Section 7. GOVERNMENT APPROVAL**

7.1 I&M shall, at its own expense, initiate and prosecute the necessary application for approval or exemption from approval from any governmental agency having jurisdiction to approve this Agreement. CPR, at its own expense, shall assist and support such application and will furnish such information and execute, deliver and file such instrument or instruments in writing as may be necessary and appropriate to obtain such approval.

7.2 In the event I&M desires to discontinue the rights conferred by this Agreement, I&M shall, at its own expense, initiate and prosecute the necessary application or other filing with any governmental agency having jurisdiction to approve or exempt the discontinuance, and CPR agrees not to oppose such discontinuance.

**Section 8. OTHER CONSIDERATIONS**

8.1 This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors or assigns, but shall not be assigned or otherwise transferred by I&M without the prior written consent of CPR, which shall not be unreasonably withheld; provided,

CPR agrees that it will consent to assignment of this Agreement in connection with a sale of all or substantially all of I&M's assets.

8.2 This Agreement shall be effective on the date I&M first commences operation over the Subject Trackage and BN Subject Trackage pursuant to this Agreement after having received all necessary approval or exemption from any governmental agency having jurisdiction to approve this Agreement and the operations to be carried out hereunder. Once activated by the commencement of I&M's operation as above indicated, this Agreement shall remain in effect thereafter for a term of fifty (50) years, and thereafter from year to year until terminated by either Party upon ninety (90) days' advance written notice.

8.3 The Parties agree that, following the commencement of I&M's operations over the Subject Trackage and BN Subject Trackage, they will make good faith efforts to enter into a tri-party agreement with BN in order to separately state the respective rights and obligations of CPR, I&M and BN with regard to the BN Subject Trackage.

THE PARTIES hereto have caused this Agreement to be duly executed on the dates and at the places indicated, and agree that the laws of the State of Minnesota will apply to its interpretation.

**I&M RAIL LINK, LLC**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

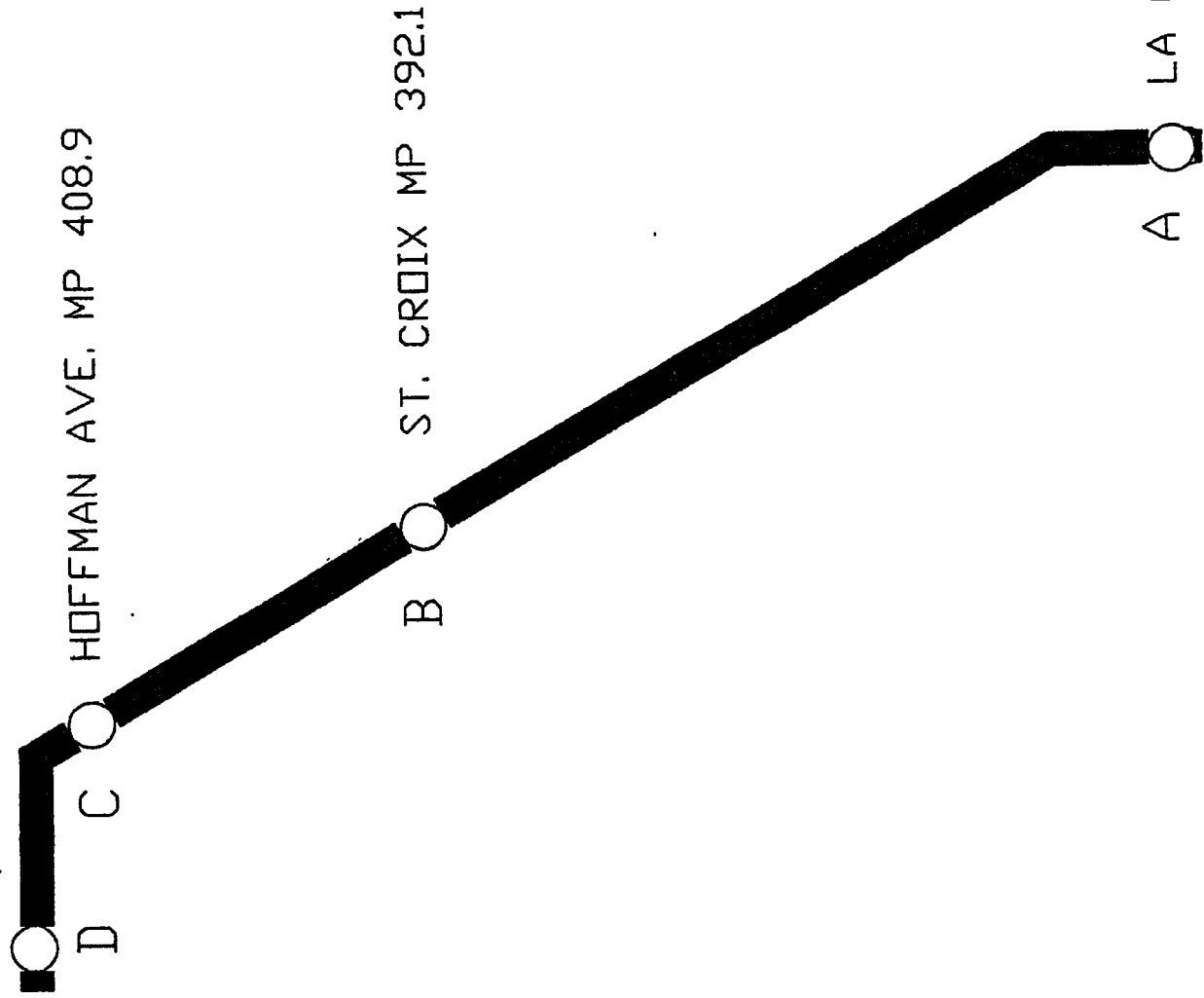
**SOO LINE RAILROAD COMPANY**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

MERRIAM PARK  
MP 416.3

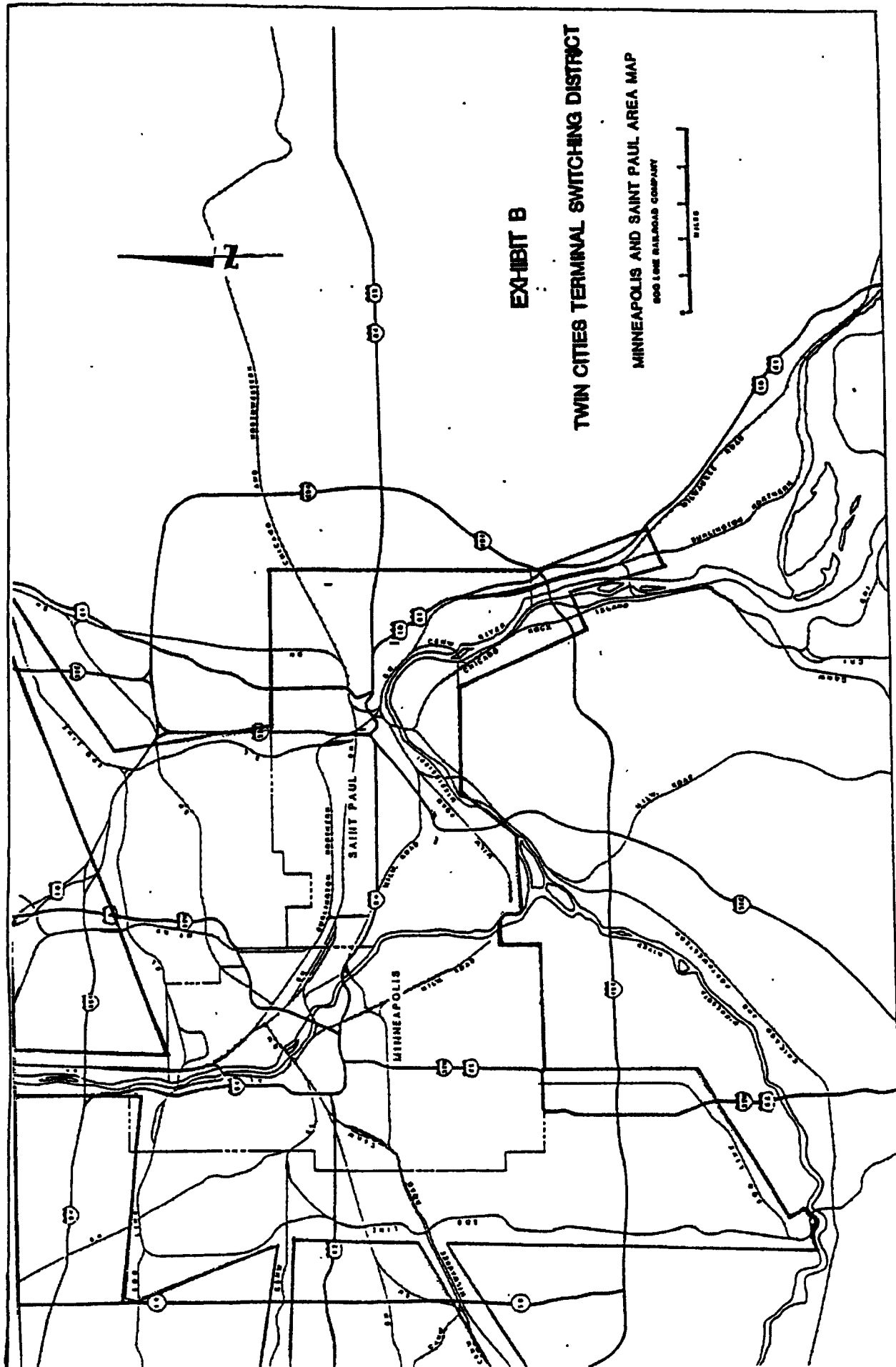


# EXHIBIT A

I & M TRACKAGE RIGHTS  
LA CRESCENT - ST. PAUL

Nov. 14, 1996





APPENDIX A

COMPENSATION FOR TRACKAGE RIGHTS

(a) As compensation for the trackage rights, I&M will pay CPR a sum computed by

{{

}}

(b) I&M shall furnish CPR, within ten (10) days of the end of each month, a statement showing the number of cars, engines, cabooses and ton miles operated over the Subject Trackage and BN Subject Trackage during the month. Ton miles shall include the weight of locomotives and cabooses. Promptly upon receipt of such statement CPR shall issue its invoice for all amounts due hereunder for the month. All payments called for under this Appendix shall be made by I&M within thirty (30) days after such invoice. In the event no statement is received by CPR within the ten (10) day period, CPR shall be entitled to issue its invoice based on estimated ton miles.

{{

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

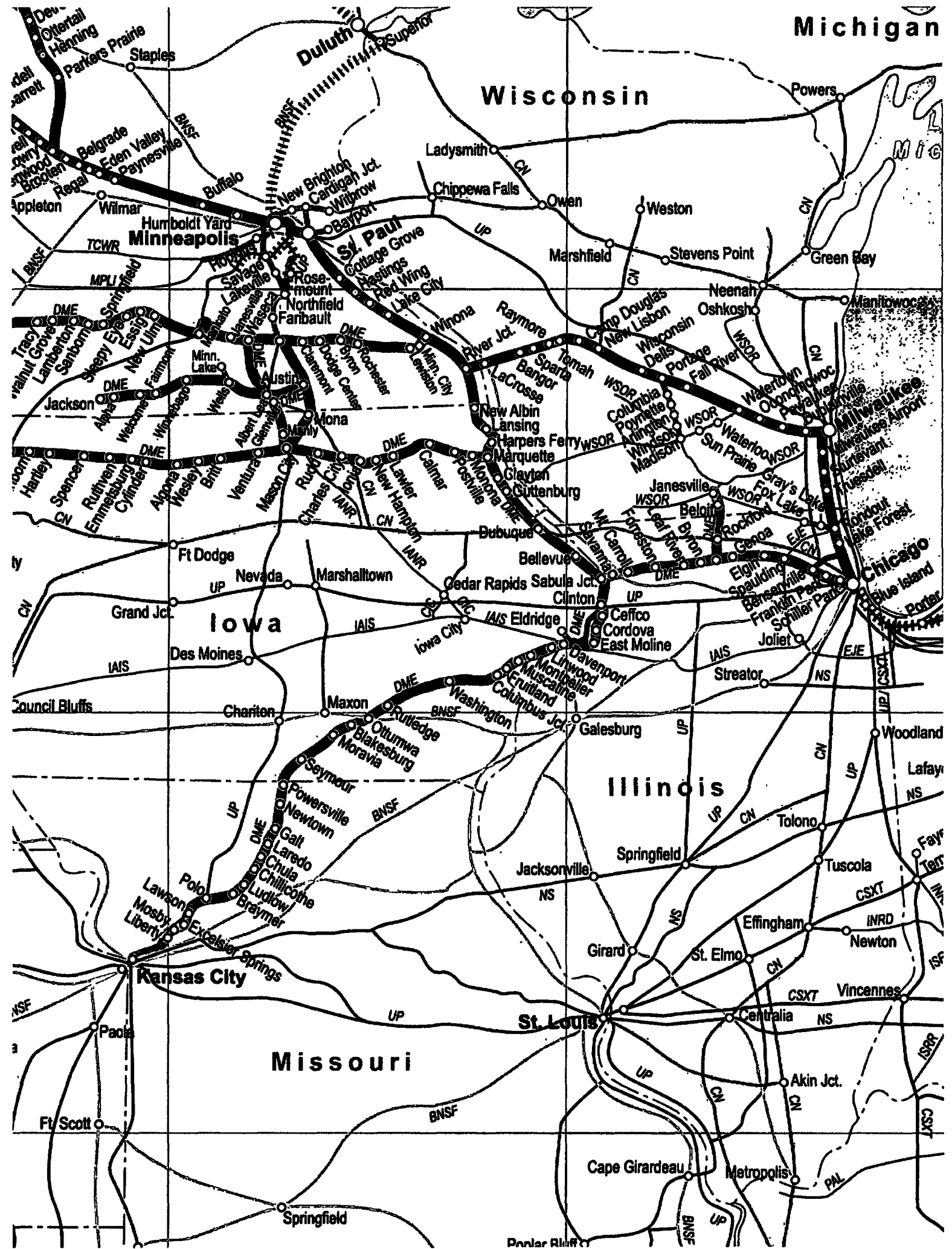
[REDACTED]

[REDACTED]}}

## **APPENDIX B ZONES**

- Zone 1: MP159.0 at LaCrescent, MN to MP392.1 at St. Croix Jct., MN
- Zone 2: MP392.1 at St. Croix Jct., MN to MP409.5 at Division Street, St. Paul, MN  
(excluding St. Paul Yard)
- Zone 3: MP409.5 at Division Street, St. Paul, MN (excluding St. Paul Yard) to end of  
rights at MP416.3 at Merriam Park, St. Paul, MN

# EXHIBIT 2



Michigan

Wisconsin

Iowa

Illinois

Missouri

Minneapolis

St. Paul

Chicago

St. Louis

Kansas City

Ft. Scott

Springfield

Cape Girardeau

Metropolis

Vincennes

Newton

St. Elmo

Girard

Jacksonville

Springfield

Tolono

Lafayette

Porter

Blue Island

Forest Park

Gray's Lake

Watertown

Manitowish

Manitowoc

Oshkosh

Neenah

Stevens Point

Green Bay

Powers

Weston

Owen

Chippewa Falls

Ladysmith

Superior

Duluth

Staples

Belgrade

Eden Valley

Paynesville

Regal

Appleton

Wilmar

Buffalo

New Brighton

Cardigan Jct.

Witbrow

Bayport

Cottage Grove

Hastings

Red Wing

Lake City

Winona

Raymore

River Jct.

LaCrosse

Bangor

Tomah

Wausau

Portage

Fall River

Watertown

Manitowish

Manitowoc

Oshkosh

Neenah

Stevens Point

Green Bay

Powers

Weston

Owen

Chippewa Falls

Ladysmith

Superior

Duluth

Staples

Belgrade

Eden Valley

Paynesville

Regal

Appleton

Wilmar

Buffalo

New Brighton

Cardigan Jct.

Witbrow

Bayport

Cottage Grove

Hastings

Red Wing

Lake City

Winona

Raymore

River Jct.

LaCrosse

Bangor

Tomah

Wausau

Portage

Fall River

Watertown

Manitowish

Manitowoc

Oshkosh

Neenah

Stevens Point

Green Bay

Powers

Weston

Owen

Chippewa Falls

Ladysmith

Superior

Duluth

Staples

Belgrade

Eden Valley

Paynesville

Regal

Appleton

Wilmar

Buffalo

New Brighton

Cardigan Jct.

Witbrow

Bayport

Cottage Grove

Hastings

Red Wing

Lake City

Winona

Raymore

River Jct.

LaCrosse

Bangor

Tomah

Wausau

Portage

Fall River

Watertown

Manitowish

Manitowoc

Oshkosh

Neenah

Stevens Point

Green Bay

Powers

Weston

Owen

Chippewa Falls

Ladysmith

Superior

Duluth

Staples

Belgrade

Eden Valley

Paynesville

Regal

Appleton

Wilmar

Buffalo

New Brighton

Cardigan Jct.

Witbrow

Bayport

Cottage Grove

Hastings

Red Wing

Lake City

Winona

Raymore

River Jct.

LaCrosse

Bangor

Tomah

Wausau

Portage

Fall River

Watertown

Manitowish

Manitowoc

Oshkosh

Neenah

Stevens Point

Green Bay

Powers

Weston

Owen

Chippewa Falls

Ladysmith

Superior

Duluth

Staples

Belgrade

Eden Valley

Paynesville

Regal

Appleton

Wilmar

Buffalo

New Brighton

Cardigan Jct.

Witbrow

Bayport

Cottage Grove

Hastings

Red Wing

Lake City

Winona

Raymore

River Jct.

LaCrosse

Bangor

Tomah

Wausau

Portage

Fall River

Watertown

Manitowish

Manitowoc

Oshkosh

Neenah

Stevens Point

Green Bay

Powers

Weston

Owen

Chippewa Falls

Ladysmith

Superior

Duluth

Staples

Belgrade

Eden Valley

Paynesville

Regal

Appleton

Wilmar

Buffalo

New Brighton

Cardigan Jct.

Witbrow

Bayport

Cottage Grove

Hastings

Red Wing

Lake City

Winona

Raymore

River Jct.

LaCrosse

Bangor

Tomah

Wausau

Portage

Fall River

Watertown

Manitowish

Manitowoc

Oshkosh

Neenah

Stevens Point

Green Bay

Powers

Weston

Owen

Chippewa Falls

Ladysmith

Superior

Duluth

Staples

Belgrade

Eden Valley

Paynesville

Regal

Appleton

Wilmar

Buffalo

New Brighton

Cardigan Jct.

Witbrow

Bayport

Cottage Grove

Hastings

Red Wing

Lake City

Winona

Raymore

River Jct.

LaCrosse

Bangor

Tomah

Wausau

Portage

Fall River

Watertown

Manitowish

Manitowoc

Oshkosh

Neenah

Stevens Point

Green Bay

Powers

Weston

Owen

Chippewa Falls

Ladysmith

Superior

Duluth

Staples

Belgrade

Eden Valley

Paynesville

Regal

Appleton

Wilmar

Buffalo

New Brighton

Cardigan Jct.

Witbrow

Bayport

Cottage Grove

Hastings

Red Wing

Lake City

Winona

Raymore

River Jct.

LaCrosse

Bangor

Tomah


Wausau

Portage

F

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused a copy of the foregoing Reply Comments of Canadian Pacific Railway Company to be served by first class mail, postage prepaid, this 19th day of November 2010 to all parties of record.

  
Matthew J. Warren